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1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR20108-0049
7 JAMES ARTHUR RAY,)
8 Defendant.)
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R. DARROW
16 ORAL ARGUMENT/EVIDENTIARY HEARING
17 RE PENDING MOTIONS DAY TWO
18 NOVEMBER 10, 2010
19 Camp Verde, Arizona
20 (Partial transcript)
21
22
23

24 REPORTED BY
25 MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

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1 Proceedings had before the Honorable

2 WARREN R. DARROW, Judge, taken on Wednesday,
3 November 10, 2010, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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PROCEEDINGS

1 (The following is a partial transcript --
2 examination of witnesses)
3
4 THE COURT: Back on the record in State versus
5 James Arthur Ray. Mr. Ray has waived his appearance
6 for this hearing. Present on his behalf are Ms. Do,
7 Mr. Li and Mr. Kelly. Also note that Ms. Seifter is
8 present. I guess Ms. Seifter has not yet been
9 admitted the pro hac vice. Is that correct?
10 MR. KELLY: That's correct. We have submitted
11 the application about a week and a half ago. We're
12 waiting for the approval. I'm certain it's going to
13 be approved, based on my experience.
14 THE COURT: Okay. And Ms. Polk is here
15 representing the state.
16 MS. POLK: Yes, Your Honor.
17 THE COURT: The witness is in the courtroom.
18 Ma'am, please come forward and take the
19 seat there at the witness stand. Good morning.
20 THE WITNESS: Good morning.
21 THE COURT: Miss Mercer has returned to the
22 witness stand.
23 Ma'am, you're still under oath for all of
24 this proceeding. You understand that?
25 THE WITNESS: Yes.

6

1 THE COURT: Ms. Polk, when you're ready.
2 MS. POLK: Thank you, Your Honor.
3 DIRECT EXAMINATION (Continued)
4 BY MS. POLK:
5 Q. Good morning, Miss Mercer
6 A. Good morning.
7 Q. Yesterday I believe where we left off you
8 had talked a little bit about some incidents in
9 2008. Did you -- can you tell the Court whether or
10 not you noticed a difference between the sweat lodge
11 ceremony performed by James Ray in 2007 and 2008
12 compared to 2009?
13 A. Yes.
14 Q. And in what way was it different?
15 A. In 2007-2008 people came in and out more
16 frequently. In 2009 they stayed in and fewer came
17 out.
18 Q. And in 2009 you testified you had a spot
19 right next to the door, is that correct?
20 A. Yes.
21 Q. Could you hear things going on inside the
22 sweat lodge in 2009?
23 A. Mostly only when the door was open. When
24 the door is closed, it's muffled. But -- you
25 know -- I can hear the essence of what's going on.

7

1 Q. And in your position by the door, did you
2 hear James Ray in 2009 say things to participants to
3 encourage them to stay in?
4 MS. DO: Your Honor, may I object based upon
5 the Court's ruling yesterday regarding the scope of
6 this hearing?
7 THE COURT: And I went back and read the brief
8 and the notes I'd made originally on November 2.
9 And what I'd stated at the outset I think when I was
10 addressing Mr. Li, both Mr. Kelly and Mr. Li,
11 addressed the issue.
12 But I what I said at the outset had to do
13 with the need for a court to know what the alleged
14 facts are in the present case. The state's
15 obligated to show similarity, has to show that.
16 So in terms of the scope of the hearing,
17 what happens -- what has happened allegedly in the
18 present matter is relevant. And at this point
19 sorting that out is somewhat difficult until I
20 actually have had a chance to consider what the
21 facts are to some degree of proof in the present
22 matter and then look over evidence of prior acts.
23 It's hard to make a comparison.
24 So at this time I'm going to overrule the
25 objection.

8

1 You may answer.
2 MS. POLK: Do you remember the question?
3 THE WITNESS: No.
4 Q. BY MS. POLK: I believe my question was
5 what did you hear James Ray say to participants in
6 2009 with respect to staying inside the sweat lodge?
7 A. He definitely encouraged, strongly
8 encouraged, them to stay in. He said things like
9 you're above that. You're not your body. You're
10 more than your body. And specifically saying to
11 people -- you know -- you don't have to leave -- you
12 know -- stick it out. You're tough. Things like
13 that.
14 Q. Did you notice similarities between the
15 2009 sweat lodge ceremony and the ceremonies in 2007
16 and 2008?
17 A. In regards to?
18 Q. First let's talk about the number of
19 people coming out sick.
20 A. Well, there was always people coming out
21 sick. In 2009 the less total number people came
22 out, and James actually in 2009 asked them from the
23 tent to come back in.
24 2008 a lot of people came out sick. A lot
25 would come out, get water, get cooled off and go

9

1 back in. And in 2009 I think maybe one or two
2 people did that. But in 2007-2008 people were
3 encouraged to go out and cool off and go back in.
4 If you need water, go outside. But then they'd come
5 back in.

6 You know -- it took a while in between
7 rounds because so many people were going out and
8 coming back. It was almost as long as a round was
9 where people would come in and out.

10 Where in 2009 -- you know -- only a couple
11 would come out each round. And they didn't come out
12 on their own. They were dragged out. Most of the
13 ones that came out were in much worse shape than in
14 2007 and 2008, in my opinion.

15 Q In 2009 did you observe anybody trying to
16 push a lady to go back in?

17 A Yes. And that's the first time I'd seen
18 that happen. Because usually it's -- in the
19 traditional sweat lodge, if you need to leave, you
20 leave and that's okay, and you can stay outside.

21 And in 2007 and eight people did go back
22 in and out. But if they stayed out, that was fine.

23 But in 2009 one lady came out about the
24 second round. And she was pretty upset and more
25 upset and crying because she was letting James

10

1 down -- you know. She wasn't --

2 MS. DO: Objection, Your Honor. Foundation.

3 THE COURT: I don't know if this is based on a
4 direct observation or what. So sustained.

5 Q BY MS POLK Without telling us why she
6 was upset, just tell us what you observed

7 A She was very upset, crying, distraught,
8 shaking. And then the Dream Team was there talking
9 with her. And by the -- I think about the fifth
10 round she said she wanted to go back in.

11 But then she got up and said no. I don't
12 want to go back in. They got her to -- she stood up
13 and sat back down a couple times, then they walked
14 her. There was one on each side. They walked her
15 to the door and got her to the door. And she said
16 no. I can't go in. They're pushing her in, and she
17 said no, no, no.

18 And then she got down on her knees and
19 said no. Again they're pushing her. Then I walked
20 away. But I don't think she went in. But I'd never
21 seen anyone try to -- you know -- push someone in
22 like that before.

23 Q Around the fifth round of the 2009 sweat
24 lodge ceremony, did you observe a man yelling?

25 A Say that again.

11

1 Q Around -- we're talking about the 2009
2 sweat lodge incident. Around the fifth round did a
3 man come out yelling from the lodge?

4 A He said he was having a heart attack. He
5 came out and was in distress and was laying on the
6 ground for a while -- you know -- a minute or so and
7 then started yelling that he thought he was having a
8 heart attack. He was screaming at the top of his
9 lungs I'm going to die. I don't want to die. I'm
10 having a heart attack.

11 Q Did you hear James Ray respond to that
12 man's yelling?

13 A Yes.

14 Q What did you hear him say?

15 A Well, first he asked who was out there
16 yelling. His tone appeared to be annoyed because
17 the guy was yelling and everyone could hear it. It
18 seemed like people were getting concerned.

19 So first he wanted to know who it was.

20 Once he found who it was, he called him by name and
21 said you're more than that. You're not your body.

22 And then he -- the guy kept screaming. And James
23 said it's a good day to die. Just go with it.

24 Things like that.

25 Q Do you remember the name of the man who

12

1 was screaming?

2 A No. I don't know their names. And most
3 of them shaved their heads. So I don't know if I'd
4 even recognize or know a lot of the people today.

5 Q In 2009 how many people would you say you
6 pulled out of the sweat lodge before it ended?

7 A Maybe 10, 8 to 10. Me personally?

8 Q Yes. Eight to 10 before it ended?

9 A Yeah.

10 Q And in your position where you sat by the
11 door, did you hear any discussion inside about
12 people being unconscious?

13 A Yes.

14 Q Tell The Court what you heard. First tell
15 the Court who you heard speaking.

16 A I don't know who it was. I could just
17 give kind of general direction -- you know -- from
18 what I could tell. At one point I heard him say --
19 someone towards the back left said that someone was
20 unconscious. Well, there was -- every round it came
21 out that people were unconscious.

22 But someone said someone is unconscious.
23 And James said that's okay. She's been down this
24 road before. She's fine. She knows what she's
25 doing.

13

1 And then another -- I don't know if it was
2 the same round or not. On the other side -- it was
3 in the back again. But on the right side or towards
4 the middle somebody said James, so and so are
5 unconscious. And he said really? They're not
6 breathing? And they said -- it was a guy. And they
7 said yes. He said they're where they're supposed to
8 be. They'll be fine till the next round or we've
9 got one more round or something to that effect.

10 Q. When the sweat lodge was over in 2009, did
11 everybody come out?

12 A. No.

13 Q. What did you do when it was over?

14 A. Well, after all the people came out, when
15 we got them all out, I looked back inside and I saw
16 that there were still people in there.

17 Q. Why did you look back inside?

18 A. I don't know. I just did. I just did.

19 Q. What did you see when you looked back
20 inside?

21 A. I saw -- I couldn't quite tell, but it
22 looked like three people laying in the back of the
23 sweat lodge all the way in the far back of the sweat
24 lodge.

25 Q. What did you do then?

14

1 A. I looked at James, and I said James.
2 There is still people in there. I need some help.
3 And then I looked around realizing -- I looked back
4 in there again and saw -- I could see that there was
5 two men and they were big. And I knew it would be
6 really hard to drag them out even -- you know -- if
7 I had help because you have to bend over to be in
8 there.

9 So I said James, can I open the back of
10 the sweat lodge? And he said no. Only if it's
11 absolutely necessary. It's sacrilegious. And I
12 looked in again. I can't do this. So I just went
13 around and started taking up the back of the sweat
14 lodge.

15 Q. And then what did you do?

16 A. Well, I couldn't get it all up by myself
17 because it's tarp upon tarp and -- you know --
18 they're overlapping. And I couldn't pull it up so I
19 started yelling for help, for someone to come help
20 me lift up the tarps.

21 Q. Did you get help?

22 A. Yes. My daughter came over and another
23 guy who was sitting on the side came over and helped
24 us lift up the tarp. And we saw three people laying
25 there unconscious.

15

1 Q. Did you drag those three people out?

2 A. Yes.

3 MS. DO: Your Honor, object to the continuing
4 line of inquiry. We've now gone beyond what the
5 Court needs.

6 THE COURT: And, Ms. Polk --

7 MS. POLK: Your Honor I can --

8 THE COURT: The idea is, I believe, to indicate
9 how a fact can be inferred from a prior act, has the
10 appropriate relationship to a fact at issue. And
11 there is an element of the scope of the hearing
12 here. And how is that relevant when you look at the
13 analysis that has to be done under 404(b)?

14 MS. POLK: Your Honor, it's relevant because
15 the Court has heard part of the story about the 2005
16 incident involving Daniel Pfankuch. What the Court
17 will hear further on in this hearing is that Daniel
18 Pfankuch at the end of the ceremony did not want to
19 come out. It was his wife who eventually pushed and
20 pulled him out. But if not for the wife, he too
21 would have stayed and probably suffered the same
22 fate as the victims in this case.

23 THE COURT: And you're saying that that --

24 Ms. Do?

25 MS. DO: Your Honor, I think the Court has

16

1 heard through Ms. Polk's articulation of the state's
2 theory, and we heard much yesterday about the 2009.
3 I think based upon the record, the Court does have
4 an idea what the state alleged occurred on October
5 8, 2009,.

6 The purpose of this hearing, again, is to
7 go back to what they alleged occurred in 2003 to
8 2008 and to see if the state can produce clear and
9 convincing evidence to convince this Court that
10 those acts did, in fact, occur and that Mr. Ray
11 committed them.

12 I think at this point we are going
13 beyond -- I imagine my cross-examination is going
14 to, essentially, turn today into another minitrial.
15 I think it's gone beyond the scope.

16 THE COURT: Let's try to analyze this.

17 Ms. Polk, you're saying that you're going
18 to show in 2005 with Mr. Pfankuch there was some act
19 by Mr. Ray that would be relevant to the present
20 case? Is that what you're saying?

21 MS. POLK: Yes, Your Honor.

22 THE COURT: And what is that act from 2005 and
23 Mr. Pfankuch? What is the specific act that you
24 want to show now?

25 MS. POLK: That at the conclusion of the

17

1 ceremony in 2005 Mr. Ray leaves, and inside is still
2 one of the participants. It's Daniel Pfankuch.
3 That if his wife had not been with him -- her
4 testimony will be at trial that Daniel is left in
5 the sweat lodge. He's in a state of distress. He
6 doesn't want to come out. And he was not going to
7 come out if she did not manage to pull and push and
8 drag him out.

9 What Mr. Ray did at the conclusion of the
10 2005 sweat lodge was he left. He went outside and
11 was not taking care of his participants.

12 That is not only similar but that's
13 identical to what happens in 2009 when the sweat
14 lodge ceremony concludes. Mr. Ray leaves, and but
15 for Miss Mercer looking in the sweat lodge and
16 seeing the three people still there, what she will
17 testify or what the evidence would show is that of
18 the three people she pulls out, two die. They
19 are -- they're pronounced dead at the scene
20 eventually. A third one does survive. It's not
21 only similar, Your Honor. It's identical to what
22 happened in 2005 with Daniel Pfankuch.

23 THE COURT: And how do you relate that to one
24 of the purposes that would be proper under 404(b)
25 where you talk about intent? You mentioned intent.

18

1 Even though intent is not an element technically of
2 the charge, but you mention intent. You cited cases
3 talking about knowledge, other things that can be
4 shown under 404(b), modus operandi.

5 What is the purpose, the specific factual
6 link that you're talking about? You're saying --
7 when you talk about there is a similarity to this
8 conduct, what purpose does it go directly to?

9 MS. POLK: Your Honor, it goes to show the
10 requisite mental state of the crime that Mr. Ray is
11 charged with, which is manslaughter. I did bring
12 cases for the Court today. When 404(b) references
13 legitimate purposes for offering evidence about
14 acts, it list intent as one of those purposes.

15 What the cases say is intent as used in
16 404(b) refers to the requisite mental state. It's
17 synonymous with the mental state or mens rea. So it
18 doesn't mean intent as intentional. It means what's
19 the level of intent? What's the mental state that
20 the state has to prove for the underlying charge.

21 And the two cases I brought for the Court,
22 one is a second degree murder case where it's the
23 State versus Woody case. And in that case the
24 defendant drove the wrong way drunk on a road down
25 in Tucson, and he hit someone head on and killed

19

1 them. The state charged -- or he was indicted by
2 the grand jury with second degree.

3 THE COURT: I looked at that case this
4 morning. Both of you cited it originally. I know
5 that the defense did.

6 MS. POLK: Right.

7 THE COURT: So I looked at that specific case
8 this morning.

9 MS. POLK: And the defendant in that case is
10 charged with second degree murder. The requisite
11 mental state on second degree was that the state had
12 to show extreme indifference to human life. That
13 was the purpose that the state was offering the
14 prior DUI conviction for was to show the intent or
15 the mens rea, which in a second degree case --
16 second degree charge is reckless indifference to
17 human life under the theory charged.

18 And the Court let it in to show that
19 intent. The Court also -- on appeal the Court
20 recognized that that prior conviction in Woody
21 showed not only the requisite mental state of
22 extreme indifference to human life, but it also let
23 it in because it shows knowledge of the consequences
24 of somebody's act.

25 The second case I brought for the Court is

20

1 the State versus Villalobos case, which is a 2010
2 case out of the Arizona Supreme Court. It was a
3 death penalty case where the defendant was charged
4 with -- and I can give you a copy of the case, Your
5 Honor. But the defendant was charged with first
6 degree murder and child abuse.

7 And in that case again the Court admitted
8 prior acts of abuse by the defendant toward the
9 victim, who was a five-year-old stepdaughter named
10 Ashley. He, essentially, beat her to death. And he
11 was charged with first degree murder.

12 The Court allowed in, I believe, four
13 prior acts. They were not convictions but four
14 prior episodes where he had hit her or bruised her
15 or otherwise physically abused her.

16 And the Court let that in to show the
17 requisite mental state, which in the first degree
18 murder case was intentionally or knowingly.

19 But it's clear from those cases that when
20 intent is used in 404(b), it is synonymous with the
21 requisite mental state or the mens rea.

22 And so just as in Villalobos, the prior
23 acts showed the mental state of knowing or
24 intentional. And just as in Woody, the prior act
25 showed the mental state of extreme indifference to

21

1 human life.

2 In this case the defendant is charged with
3 manslaughter. The requisite mental state is
4 recklessly. And that's why all of these are
5 relevant. Because the prior acts show the
6 defendant's disregard, his -- and again I'll pull up
7 the language since reckless is such a long
8 definition. But the state has to show the
9 substantial disregard --

10 THE COURT: I'm aware of and consciously
11 disregards, substantial and significant risk,
12 something to that effect. And there is a definition
13 of how far the deviation has to be from expected
14 conduct for it to get to that standard.

15 MS. POLK: Yes. The state has to show a
16 substantial -- that the defendant was aware of and
17 consciously disregards a substantial and
18 unjustifiable risk that the result will occur and
19 that the disregard of the risk constitutes a gross
20 deviation from the standard of conduct that a
21 reasonable person would observe in the situation.

22 And that's how we prove that the defendant
23 acted recklessly. In other words, I made this
24 argument yesterday. But what separates what
25 happened in 2009, what distinguishes it from a

22

1 tragic accident and makes it a crime?

2 The answer is this state of recklessness.
3 Having gone through the sweat lodges in 2005, 2007,
4 2008, having had -- being made aware of what happens
5 to people when you expose them to extreme heat,
6 aware of that risk, chooses to consciously disregard
7 it and then conducts a sweat lodge in 2009 that is
8 even hotter, more intense, puts more pressure on his
9 participants to stay inside.

10 That's what makes this a crime. That's
11 what shows he acted recklessly. And a gross
12 deviation from the standard of conduct that a
13 reasonable person, being on notice from 2005 and
14 prior sweat lodge ceremonies, being on notice what
15 happens when you push people, when you subject them
16 to the extreme heat. He has people passing out
17 believing they're having heart attacks. He's on
18 notice, and yet in 2009 he chooses to conduct the
19 sweat lodge in an even more intense manner.

20 THE COURT: I understand the argument about
21 notice, and I understand that defense making a
22 distinction between level of injury. But when you
23 talk about something that happens after -- again I'm
24 not talking about any decision I've made about any
25 facts. But when you talk about something about how

23

1 someone reacts to the incident, you have kind of a
2 causation question that comes up there.

3 And the other aspect that hasn't really
4 been dealt with is a 403 aspect. It almost appears
5 you're talking about some trait of callousness or
6 something that might -- that would clearly not be
7 admissible. An argument to that effect would not be
8 admissible. Evidence to that effect would not be
9 admissible. That's a 403 question. But -- and
10 that's separate.

11 I just want to stay now with something
12 with how someone reacts after an incident, evidence
13 as to how someone reacts after the incident going to
14 show that there is an evidence of conscious
15 disregard. I understand that's what you're saying.

16 MS. POLK: Your Honor, when I agree with the
17 Court that how he reacts afterwards is not what's
18 relevant, that's not the point that the state's
19 trying to make. It's not how he reacts afterwards.
20 It's how he reacted or failed to act while the
21 ceremony is going on.

22 And just as with Daniel Pfankuch where he
23 leaves the sweat lodge, leaves one of his
24 participants in there who is brought out by the
25 wife, that's exactly what happens in 2009 where

24

1 while the ceremony is going on, he's ignoring his
2 other participants who are telling him that people
3 are not breathing or people are unconscious. And
4 then when it's over he leaves. And this time there
5 are three people there, two of whom do not survive.

6 So I'm not trying to emphasize what he
7 does after learning that they have not survived or
8 that there is three people in the sweat lodge.
9 Other than that there is going to be another
10 question about calling 911 and the defendant's
11 reaction when Miss Mercer is trying to find him to
12 ask him if 911 should be called. Because that, of
13 course, is very similar to what happened in 2005 and
14 the 911 call for Daniel Pfankuch.

15 THE COURT: Ms. Do, you want to respond?

16 MS. DO: Only if the Court is going to change
17 the tentative ruling earlier. Otherwise I would
18 agree with the Court. I think that what we've been
19 hearing in terms of the evidence regarding what
20 Mr. Ray allegedly did or didn't do after the prior
21 acts and the act on October 8 occurred is a trait of
22 character demonstrating that he's callus. That
23 certainly is not an exception under 404(b).

24 Again, the defense would just like to
25 refocus this hearing on the issue of whether or not

25

1 these prior acts that the state alleged did, in
2 fact, occur and that they can establish by clear and
3 convincing evidence.

4 The Court has heard I think more than
5 sufficient evidence of what the state alleges
6 occurred on October 8 to draw any similarities if
7 there are any. I do agree with the Court. I think
8 at some point later when it's appropriate, we're
9 going to ask that such evidence showing Mr. Ray's
10 action or inaction after the acts occurred not be
11 admitted.

12 THE COURT: Thank you.

13 At this time I'm going to hear the
14 evidence. I've expressed my concerns with it. I'll
15 have to assess all of this, look at all of the
16 evidence after the hearing is completed.

17 So, Ms. Polk, go ahead and ask the
18 question.

19 MS. POLK: Thank you.

20 Q Miss Mercer, after the three people were
21 pulled out of the sweat lodge in 2009, did you have
22 a conversation with someone about calling 911?

23 A Yeah. Because they were still alive.

24 Well, I could hear the woman breathing. And the
25 other guy wasn't blue.

26

1 So they're pulled out. The lady who I
2 thought the nurse comes -- was the nurse comes
3 over. And she says she's not breathing. And I said
4 I know. And -- she looks at me and says what should
5 we do? I thought she was the nurse. So I thought
6 what's going on here?

7 My husband comes around the corner, and he
8 goes call 911. He told that to Amayra. Amayra
9 walked the other way. Then he looked at me and he
10 goes call 911.

11 So someone said Megan has a phone. So I
12 looked over to James Ray because I couldn't see
13 Megan. I looked over to see where James was. He
14 was sitting in the same place he was when I told him
15 I needed help, when I asked if I could open the back
16 of the sweat lodge. He was sitting over in the
17 shade drinking some water. And he was still there
18 when I came running around saying we need to call
19 911. Where is Megan?

20 And he goes like this -- I go I need a
21 phone. He just -- you know -- shrugged his
22 shoulders and took a drink of water. So I was
23 living on property at the time. So I got in the
24 golf cart and ran over to my house -- I mean drove
25 to my house -- and called 911.

27

1 Q. You called 911?

2 A. Yes.

3 MS. POLK: Thank you, Miss Mercer.

4 Thank you, Judge.

5 THE COURT: Thank you, Ms. Polk.

6 Ms. Do?

7 MS. DO: May I have one moment, Your Honor?

8 THE COURT: Of course.

9 CROSS-EXAMINATION

10 BY MS. DO:

11 Q Good morning. Miss Mercer -- are you
12 okay? You want a break?

13 A. (No audible response.)

14 THE COURT: We'll do that. Heidi, let's just
15 take a few minutes.

16 (Recess)

17 THE COURT: The record will show the presence
18 of all the attorneys. The witness, Miss Mercer, is
19 on the witness stand and has been sworn.

20 And, Ms. Do, you may cross-examine.

21 MS. DO: Thank you.

22 Q. We're going to try this again.

23 A. Yes.

24 Q. If I ask you something that you don't

25 understand, please just let me know. I'll rephrase

28

1 it or ask it better. Okay?

2 A. Okay.

3 Q. Let me start with what you've testified to
4 regarding the 2009 incident, Mrs. Mercer. You had
5 testified that at the 2009 sweat lodge you stood
6 outside and were able to hear certain things going
7 on inside; is that correct?

8 A. Yes. I was usually sitting outside.

9 Q. Okay. You were sitting outside the sweat
10 lodge, and you could hear what was going on inside?

11 A. When the door was opened, I could hear
12 everything. When it was closed, I could hear
13 somewhat muffled.

14 Q. Okay. But through the muffled you were
15 able to make out certain words, as you've testified
16 to?

17 A. Yes.

18 Q. And what you heard was certain people
19 inside the sweat lodge screaming or saying or
20 yelling out that there were folks inside
21 unconscious, is that correct?

22 A. That was when the door was open that was
23 being said.

24 Q. Okay. How many times do you think you
25 heard that said?

29

- 1 A. Two or three. Two definitely. Three -- I
2 think another time. But yes.
3 Q And you're certain that you heard the word
4 "unconscious"?
5 A. Positive.
6 Q And when you heard somebody say or
7 different people say two to three times that
8 somebody was unconscious inside, what did that make
9 you think or how did you feel when you heard that?
10 Did it alarm you?
11 A. What alarmed me was that they were asking
12 James what to do about people unconscious. Because
13 usually someone -- you know -- might take them out.
14 But it's my job to sit at the door. I don't -- in
15 the lodge James is in control.
16 Q. I understand that. But what I'm asking
17 you is I'm sure that as you're sitting outside and
18 you're hearing somebody inside or people inside
19 yelling out somebody is unconscious, that must have
20 made you a little bit alarmed, correct?
21 A. Yes.
22 Q All right. It would have made you think
23 that there was a distressful situation going on
24 inside the lodge, correct?
25 A. Yes.

30

- 1 Q. And then what you testified to is that
2 then you heard Mr. Ray respond to those statements,
3 is that correct?
4 A. Yes.
5 Q. And you heard Mr. Ray say things to the
6 effect of just leave them be?
7 A. Yes.
8 Q That must have made you quite alarmed;
9 correct?
10 A. Concerned. Yes.
11 Q Okay. And you're certain that you heard
12 that?
13 A. Yes.
14 Q All right. And when you heard those
15 things allegedly, you continued on with the sweat
16 lodge, correct?
17 A. James continued on with the sweat lodge.
18 Q What I mean is in your role you didn't do
19 anything to try to stop it, correct?
20 A. No.
21 Q And I understand you're probably going to
22 say you didn't feel like was your position to do
23 that?
24 A. Correct.
25 Q Okay. But you didn't turn to Ted, for

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- 1 example, your husband, and tell him we should stop
2 this, correct?
3 A. I remember turning to my friend and
4 hugging her and saying this isn't right. This isn't
5 right.
6 Q. That would be Fawn Foster?
7 A. Yes.
8 Q Okay. Now, let me ask you this. The
9 night that the sweat lodge ended, the sheriff's
10 department arrived, correct?
11 A. Yes.
12 Q. And you were there to see that happen?
13 A. Yes.
14 Q Paramedics arrived. Were you there to see
15 that happen, correct?
16 A. Yes.
17 Q. And the scene was quite traumatic,
18 wouldn't you say?
19 A. Yes.
20 Q And that night you actually got
21 transported to the hospital yourself; correct?
22 A. Yes.
23 Q. And you were transported to the hospital
24 not as a visitor but as a patient? You were
25 admitted; correct?

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- 1 A. No. Well, admitted to the emergency
2 room. I was seen in the emergency room.
3 Q. That's what I mean. You didn't go to the
4 hospital to visit people that had gotten sick or ill
5 from the sweat lodge?
6 A. No.
7 Q You went because you were being treated as
8 a patient yourself; correct?
9 A. Correct.
10 Q. And then at some point while you were in
11 the hospital, I think your husband was with you,
12 correct?
13 A. Yes.
14 Q. At some point while you were in the
15 hospital a detective, Detective Pam Edgerton,
16 interviewed you; correct?
17 A. Yes. But it --
18 Q. Let me just get a yes. Is that a yes?
19 A. I had an oxygen mask on my face and I was
20 being treated. So it was while -- yes.
21 Q Okay. And -- well, with this oxygen mask
22 you were able to communicate with her still; is that
23 correct? I mean, you could hear what she was asking
24 you; right?
25 A. Yeah. But I don't think -- but I'm

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1 talking about with an oxygen mask on my face. So --
2 Q. I understand
3 A. Okay.
4 Q. But there wasn't anything covering your
5 ears, so were you able to hear the questions she
6 asked you? Yes?
7 A. Yes.
8 Q. And having seen the sheriffs and the
9 paramedics descend upon the scene, you understood
10 how serious the situation was, correct?
11 A. Yes.
12 Q. And so this would have been your first
13 interview for the first statement you would have
14 given to anyone regarding what you may have seen or
15 observed or heard; is that correct?
16 A. Yes.
17 Q. Okay. So you hadn't spoken to anyone
18 before Detective Pam Edgerton went into your
19 hospital room, correct?
20 A. Well, no.
21 Q. Okay
22 A. I mean, I talked to paramedics and we
23 talked to the police who arrived at the scene.
24 Q. Sure. But the first full interview or the
25 first meaningful opportunity where a detective asked

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1 you questions and you answered would have been when
2 Detective Edgerton spoke to you; correct?
3 A. In the hospital, yes.
4 Q. And that would have been the first
5 statement. Now, let me ask you. Detective Edgerton
6 asked you questions about what had happened about
7 the 2009 sweat lodge, correct? Yes?
8 A. Yes.
9 Q. And she was asking you specific questions,
10 right?
11 A. I don't recall actually -- you know --
12 what she asked me. I would imagine they were.
13 Q. Okay. I mean, she asked you, for example,
14 if you were at the sweat lodge when all this
15 happened, right?
16 A. Yes.
17 Q. And you told her yes?
18 A. Yes.
19 Q. She probably asked you what your role was;
20 right?
21 A. Yes.
22 Q. And you told her that you and your husband
23 were fire attendants; correct?
24 A. Yes.
25 Q. And she asked you specific questions about

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1 what you may have observed once the ceremony ended;
2 correct?
3 A. I don't remember. But I would assume,
4 yes.
5 Q. Okay
6 A. I don't remember exactly what she asked
7 me.
8 Q. Did you know whether or not at that moment
9 you were being tape-recorded by Detective Edgerton?
10 A. No. I don't remember that. It was a lot
11 going on, and I was in the hospital. I knew someone
12 had died. There was other people -- you know -- in
13 the other rooms, and I was concerned about them and
14 hearing other things.
15 Q. I'm sure. I understand that. So when
16 Detective Edgerton asked you these questions, you
17 answered to the best of your ability, correct?
18 A. Considering the circumstances, yes. It
19 was still all in the moment.
20 Q. Yes.
21 A. Nothing had had a chance to -- you know --
22 settle.
23 Q. No time to think about what you were going
24 to say?
25 A. No. Not what I was going to say. But no

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1 time to think about what had happened and about
2 what -- you know. We were just so in the moment --
3 you know. It was reacting to a -- you know -- yeah.
4 Q. But you were of the mind, you had the
5 ability to tell Detective Edgerton that people came
6 out of the sweat lodge sick; correct?
7 A. Yes.
8 Q. And I believe you also told
9 Detective Edgerton that you had only seen this occur
10 with James Ray sweat lodges; correct?
11 A. Probably.
12 Q. Okay. So you were able to recall certain
13 details, yes?
14 A. Sure.
15 Q. And notwithstanding whether or not you
16 were able to speak through an oxygen mask, you
17 certainly did your best to tell her the truth,
18 correct?
19 A. Yes.
20 Q. And the events would have been freshest in
21 your mind having gone from the tragic accident, the
22 disaster scene, to the hospital; correct? I mean,
23 only a matter of hours? Yes?
24 A. Yes.
25 Q. Okay. Now, when you spoke to

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1 Detective Edgerton, do you remember whether or not
2 she asked you specifically did you notice anybody
3 during the actual sweat lodge, or I don't know
4 because you were inside, but did you hear anybody in
5 there having any specific problems? Do you remember
6 her asking you that question?

7 MS. POLK: Excuse me. Your Honor, I'd like to
8 just make a standing request that if references are
9 going to be made to prior statements that counsel
10 notify me ahead of time a page and a line so I can
11 follow along pursuant to Rule 613 of the Rules of
12 Evidence.

13 THE COURT: That's consistent with 613.

14 MS. DO: Your honor --

15 THE COURT: And, again, I know we talked about
16 104. There are reasons to do this. As I mentioned
17 before, there is an element of fairness to a witness
18 in impeachment situations. Also the orderly
19 presentation of evidence, and the opposing party
20 gets to see the statement.

21 MS. DO: I understand. I'm sorry. I thought I
22 was establishing the foundation by asking her if she
23 did say that. And if she said no, then it would be
24 inconsistent.

25 THE COURT: Okay. There was no hearsay

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1 objection. And could be admissible. So all right.
2 It's hearsay. But you may proceed.

3 MS. DO: Thank you.

4 I will show Ms. Polk and play the excerpt
5 when I establish the foundation if the Court is
6 willing.

7 THE COURT: And the foundation for?

8 MS. DO: Well, I believe I need to ask her the
9 question of whether or not she did say this to
10 Detective Edgerton. If she says yes, then we move
11 forward. If she says no or I don't recall -- I
12 understand this is a little but strange because the
13 Court had already indicated hearsay. The hearsay
14 rule doesn't apply to this.

15 THE COURT: Well, I just quoted Rule 104, and I
16 asked the defense if you disagreed with my
17 interpretation. I don't think I asked Ms. Polk if
18 she disagreed. I haven't heard anyone disagree with
19 that. If anybody has an objection even to alert the
20 Court with a problem with evidence, I want to have a
21 hearing where people can do that. And I'll consider
22 that.

23 But with the rules of evidence not
24 strictly applying, we'll proceed in this fashion.
25 But Ms. Polk has asked for references at this point.

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1 Anything else?

2 MS. POLK: Yes, Judge. The rule requires that
3 counsel provide me with the statement. I don't have
4 a -- she has a transcript that has page numbers and
5 line references and has not provided it to me. I
6 would just ask that I be provided so I can, again,
7 follow along, as contemplated by Rule 613.

8 MS. DO: Your Honor, I'm relying on an audio
9 provided to the defense by the state. The audio for
10 whatever reason was not transcribed like the other
11 120 witnesses for whom transcription were provided.
12 So we went through the trouble of doing it
13 ourselves. I would like to play the excerpt because
14 I think that's the best evidence.

15 May I proceed?

16 THE COURT: Yes, you may.

17 MS. DO: Thank you.

18 Q. Mrs Mercer, my question to you was did
19 Detective Edgerton ask you this specific question:
20 Did you notice anybody during the actual sweat
21 lodge -- and this is the 2009. Did you notice
22 anybody during the actual sweat lodge, or I don't
23 know because you weren't inside. But did you hear
24 anybody in there having any specific problems?
25 Do you remember that question being put to

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1 you?

2 A. No.

3 Q. Do you remember whether or not your answer
4 to that question was oh You hear moaning and
5 groaning and people breathing hard. And then -- you
6 know -- James will tell you to slow your breathing
7 down, or but yeah That's normal. There is a bunch
8 of people in there experiencing it.

9 Do you remember that?

10 A. No. I don't remember that.

11 MS. DO: Okay. Your Honor, at this time I'd
12 like to mark an audio which we had not intended to
13 use as defense -- or exhibit next order, 93. And
14 may I play the audio portion?

15 THE COURT: Ms. Polk?

16 MS. POLK: Your Honor, my objection is not to
17 the contents of the audios or the transcripts. My
18 objection is that it has not been provided to the
19 state. It's an issue of fairness so that I can look
20 at the context of where these statement are coming
21 out.

22 It's unfair to pull something out, play
23 just a portion and not provide to the state a copy
24 of the entire statement so that in the interest of
25 trying to seek out the facts we can all understand

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1 the context of what happened.

2 The Rule 613 clearly provides that upon
3 request the statement has to be shown or disclosed
4 to opposing counsel. That's all I'm asking is that
5 I be given some notice of what this is so that I can
6 respond appropriately.

7 THE COURT: It's Detective Edgerton's
8 recording, which you provided; right? Isn't that --
9 Ms. Polk, you provided this recording?

10 MS. POLK: Yes, Your Honor. But I think the
11 rule contemplates having in court the statements so
12 that we can figure out what really happened, what's
13 really said and not pull out little pieces to play
14 without having the state have the opportunity to
15 look at the context, the bigger context, of where
16 the statement comes out of.

17 THE COURT: I'm going to hear the excerpt now.
18 And at the recess you will have the tape, Ms. Polk.
19 Perhaps the disclosure just hasn't been ideal. This
20 is a pretrial hearing, though.

21 So you may proceed.

22 MS. DO: Thank you, Your Honor.

23 For the record, I'm playing the excerpt
24 that begins at time 17:05 on the state's recording.

25 May I just have a moment?

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1 THE COURT: Of course.

2 Q BY MS DO Miss Mercer, I'm going to ask
3 you to listen to this excerpt, please

4 (Recording played)

5 Q BY MS. DO: Mrs Mercer, I just played the
6 excerpt for you. And the male voice would have been
7 your husband, Ted Mercer; is that correct?

8 A. Yes.

9 Q. And prior to the excerpt, regarding
10 whether or not you heard anything from inside the
11 sweat lodge, is it true that you and Mr. Mercer told
12 Detective Edgerton that people were free to leave?

13 A. They are.

14 Q And they are, correct?

15 A. Yes.

16 Q No one forced them to stay inside?

17 A. As long as they're conscious.

18 Q. All right And in this excerpt where
19 Detective Edgerton asked you a very specific
20 question of whether you heard anybody inside the
21 sweat lodge having specific problems, your answer to
22 her was moaning and groaning, but that's normal;
23 correct? Is that a yes?

24 A. Yes. But --

25 Q Do you remember whether in this interview

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1 you ever told Detective Edgerton that you heard
2 people inside the sweat lodge say folks were down?
3 folks were unconscious?

4 A. No. I don't remember that interview very
5 much at all.

6 Q. Is it possible you actually did not tell
7 her that?

8 A. I don't remember that interview very much
9 at all.

10 Q. Do you remember whether or not you told
11 Detective Edgerton in this first interview you had
12 with anyone that you heard James Ray repeat or
13 respond that that's fine? Let them be?

14 A. What was the question again?

15 Q Do you remember whether or not in this
16 interview with Detective Edgerton you told her --

17 A. She wasn't at -- no.

18 Q. Let me finish the question so it's clear
19 on the record. You told her that James Ray
20 responded to those statements by saying things to
21 the effect of let them be?

22 A. I don't remember her specific questions.

23 But I know that at the time my answers were based on
24 the situation being hours old and not having time
25 to --

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1 Q Think?

2 A. Feel or even experience the moment because
3 everything was very, very fresh.

4 Q. All right. Let me move on, then,
5 Mrs. Mercer You've indicated that you have worked
6 three of James Ray's sweat lodges; is that correct?

7 A. Yes.

8 Q And that would have been the first one in
9 2007?

10 A. Yes.

11 Q. 2008 and then 2009?

12 A. Yes.

13 Q The one that you worked at in 2007, you
14 and Mr. Mercer were actually volunteers; correct?

15 A. Yes.

16 Q And so you weren't paid for that. You
17 volunteered your time?

18 A. Correct.

19 Q. And you were actually assisting another
20 person named Gary Palisch, who was the actual fire
21 tender, correct?

22 A. Yes.

23 Q You returned in 2008 again, according to,
24 I believe, what Mrs. Hamilton said, as a volunteer
25 again; correct?

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1 A. I was a volunteer.
2 Q So you weren't paid?
3 A. Correct.
4 Q You did return in 2009, and this time you
5 were contracted, and so you were paid? Yes?
6 A. Yes.
7 Q All right. So in 2007 and 2008 you and
8 Mr Mercer assisted Gary Palisch; is that right?
9 A. In 2007 we assisted Gary. 2008 he was not
10 there.
11 Q You assisted someone else?
12 A. Right. No. In 2007 Gary was the door
13 keeper. In 2008 he was there. I was the
14 assistant. And in 2009 I was the door keeper.
15 Q. Okay So let me make sure I understand
16 that correctly. 2007 and 2008 Mr Palisch was
17 there. Did I get you right?
18 A. I believe so.
19 Q All right And both of those years you
20 and Mr Mercer weren't responsible for tending the
21 fire or pitching the stones into the sweat lodge?
22 You were assisting Mr Palisch; correct?
23 A. We were -- well, Gary was the door
24 keeper. We made the fire and did the rocks. I was
25 near the door.

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1 Q What does the door keeper do?
2 A. The door keeper sits at the door.
3 Q What you did in 2009?
4 A. Yes. And listens for James to call for
5 the door to be opened. And when you open the door,
6 you open the door, and you're there to assist James
7 or do what he says.
8 Q. Thank you Now I understand So then
9 Mr. Palisch actually was closest to the sweat lodge
10 in 2007 and 2008 physically, correct?
11 A. Yes.
12 Q Being right at the door?
13 A. Yes.
14 Q. And you and Mr Mercer were
15 approximately -- how far is the fire pit to the
16 sweat lodge in 2007? And if you need to use
17 something in the courtroom to give us an idea, you
18 can do that as well.
19 A. Yeah. It's about the distance from the
20 defense table to this table.
21 Q Does the Court have an estimate? I'm not
22 sure
23 A. Maybe 8 feet, eight to 10 feet.
24 Q I don't know if the Court has
25 measurements.

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1 THE COURT: I have plans. It roughly is the
2 length of the bench there in front of the jury box.
3 MS. DO: Okay. Thank you. Maybe we can take
4 measurements later. I'll move on.
5 Q So that's the approximate distance from
6 the fire pit where you and Mr Mercer were in '07 to
7 the sweat lodge; correct?
8 A. Yes. But we -- you're not just standing
9 there by the fire. You're all around.
10 Q. Got it. But the fire pit itself is that
11 approximate distance to the sweat lodge, correct?
12 A. Yes.
13 Q. Is it -- Was it the same in '08?
14 A. Actually, I think it was moved a little.
15 But -- oh, no. It was moved in '09. Yes, it was
16 the same.
17 Q. Okay. So let me focus back now to the
18 2009 sweat lodge, the one where you and Ted -- this
19 would have been the first time that you and Ted
20 actually tended the fire and kept the door on your
21 own; correct? No one else was there to help you,
22 meaning somebody in the role of, like, Gary Palisch?
23 A. Well, Amayra was there. She would come
24 down. She wasn't there the whole time. But Ted and
25 I were the fire keeper and the door tender.

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1 Q. I understand Amayra came down and I
2 believe another staff, Angel Valley staff, Fawn
3 Foster, was also there?
4 A. Yes.
5 Q. But in terms of actual participating roles
6 in the sweat lodge, that would be you and
7 Mr. Mercer, correct?
8 A. Yes.
9 Q And that was the first year you and
10 Mr. Mercer took on that role by yourself; correct?
11 A. For James Ray's events?
12 Q. Yes.
13 A. Yes.
14 Q All right Now, that year in 2009 Ted
15 started the fire, maintained the fire, made sure the
16 rocks were hot; correct?
17 A. Yes.
18 Q And then somebody from inside the sweat
19 lodge would call out and say how many stones for
20 that round?
21 A. James Ray called for the stones.
22 Q Okay. And when James Ray called for the
23 stones, Ted would take that number of stones and
24 give it to you, correct?
25 A. He would take one stone at a time, bring

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1 it to the rock to be brushed off. It would come out
2 on a pitch fork. It would be put on a shovel,
3 handed to a person inside the sweat lodge, and they
4 would take the shovel and then dump it into the --
5 Q Got it Who handed the stones into the
6 sweat lodge?
7 A. It would vary. Either Fawn or whoever was
8 helping.
9 Q. You didn't do that?
10 A. Yes. Sometimes.
11 Q. Okay. How many times do you think you had
12 the responsibility of taking the stones from the
13 fire pit to handing it off to somebody inside the
14 sweat lodge?
15 A. In 2009?
16 Q. Yes
17 A. I didn't do the stones.
18 Q. So what was your role?
19 A. The door keeper.
20 Q. All right So you --
21 A. They would bring the -- I would hand it,
22 like, from the door to the inside.
23 Q. That's what I'm getting at That's what
24 you did, correct? At the door you handed someone
25 else the stones, correct?

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1 A. Yes.
2 Q. Okay When you did that, did you ever go
3 inside the sweat lodge?
4 A. No.
5 Q. So you stayed outside the sweat lodge?
6 A. Yes.
7 Q. Did any portion of your body go inside the
8 sweat lodge?
9 A. Well, yeah. I would lean in. I would say
10 at points my hand and head were in there. But just
11 to reach in. Because of the shape of it you want to
12 reach in.
13 Q. So just for a second you would reach in,
14 correct?
15 A. Yes.
16 Q. Pull back out?
17 A. Yes.
18 Q. And you did that how many times you think?
19 A. I really can't recall.
20 Q. Okay But if we added up all the time, it
21 wouldn't be more than a few minutes, correct?
22 A. You mean all the time that my body was in
23 the sweat lodge?
24 Q. Your head and hand leaning in
25 A. No.

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1 Q. You would agree? A few minutes? So you
2 weren't exposed to the heat inside the sweat lodge?
3 A. Oh, I could feel it. You didn't have to
4 be in it to feel it.
5 Q. But not the long exposure that people
6 inside the sweat lodge experienced; correct?
7 A. Correct?
8 Q. Okay. Now, you went to the hospital that
9 night?
10 A. Yes.
11 Q. And you were admitted as a patient?
12 A. Yes.
13 Q. They put the oxygen mask on you?
14 A. Yes.
15 Q. What else did they do to you? What else
16 did they do to treat you?
17 A. They gave me a pill for nausea,
18 antinausea --
19 Q. Were you feeling nauseated?
20 A. Yes.
21 Q. What else did they do?
22 A. I got an IV, I believe, because they
23 thought I was dehydrated.
24 Q. Anything else?
25 A. I don't think so.

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1 Q. Were you kept overnight?
2 A. No.
3 Q. They released you after a few hours?
4 A. Yes.
5 Q. Okay. And you did have a doctor, an
6 emergency doctor, treat you?
7 A. Yes.
8 Q. Okay But you weren't inside the sweat
9 lodge?
10 A. No.
11 Q. All right. Now, let me move directly to
12 the interview you gave with Detective Diskin now.
13 This would be the second time you spoke to anyone at
14 law enforcement on the 9th; correct?
15 A. Yes.
16 Q. And that would have been the morning after
17 the sweat lodge ended?
18 A. Yes.
19 Q. And this was an interview that took place
20 at the site at Angel Valley; correct?
21 A. Yes.
22 Q. And at the time when you spoke to
23 Detective Diskin, the sweat lodge was still there,
24 correct?
25 A. Yes.

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1 Q And as you were telling him what happened,
2 you used the sweat lodge sitting there to sort of
3 illustrate and help him understand what it was that
4 you saw or heard or did; correct?
5 A Probably.
6 Q It was helpful to have the sweat lodge
7 there, right?
8 A It just happened to be where I saw him.
9 But --
10 Q Sure. But it was helpful for you to
11 communicate to Detective Diskin what it was that you
12 saw on the night, October 8, to be able to point to
13 things about the sweat lodge, correct?
14 A Sure.
15 Q To talk about the materials that were
16 used? Yes?
17 A Yes.
18 Q The wood that was burned, yes?
19 A Yes.
20 Q The rocks that were used, yes?
21 A Yes.
22 Q Now, after you spoke to him, Angel Valley
23 then had some sort of cleansing ceremony, is that
24 correct?
25 A Yes.

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1 Q And everything was taken down?
2 A Yes.
3 Q All right Now, when you talked to
4 Detective Diskin that morning, did you know that you
5 were being taped? Did he tell you that?
6 A Yes.
7 Q All right. And you understood
8 Detective Diskin was there to investigate the deaths
9 that occurred the night before as homicides,
10 correct?
11 A No.
12 Q You didn't know that? Okay
13 A No. I mean, I -- no.
14 Q But you did understand he was there to
15 investigate something that was very serious that you
16 observed that was very traumatic, correct?
17 A Yes.
18 Q And you knew that Detective Diskin needed
19 to have all of the information possible in order to
20 investigate the facts and the evidence, correct?
21 A Yes. I think I talked to him because I
22 felt like the interview in the emergency room wasn't
23 enough.
24 Q Did you call Detective Diskin?
25 A No.

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1 Q He came out to see you, correct?
2 A No. He was just there, and I walked up to
3 him.
4 Q He was just there?
5 A He was on the property at Angel Valley. I
6 lived on the property at Angel Valley.
7 Q Right
8 A I can't remember what I was doing, but at
9 one point I saw him. And I didn't -- I just wanted
10 to talk to a police officer.
11 Q Okay So the next morning you realized
12 that you had not given a complete, full statement to
13 Detective Edgerton? Is that your testimony?
14 A Yes.
15 Q And then when you realized that, you
16 didn't pick up the phone and call anyone at the
17 sheriffs to tell them that; is that correct?
18 A No. I think it was more of just --
19 Q Did you do that? Did you pick up the
20 phone?
21 A No.
22 Q Detective Diskin then happened to be at
23 Angel Valley, correct --
24 A Yes.
25 Q -- is your testimony? Now, isn't it true

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1 that he came out and interviewed Ted Mercer, your
2 daughter, Sarah Mercer, and then you?
3 A I can't recall.
4 Q But he did, in fact, interview all three
5 of you that day?
6 A I believe so.
7 Q Okay Now, when Detective Diskin asked
8 you questions, he asked you again specific questions
9 about what happened on 2009, correct? Or in 2009.
10 A Yes.
11 Q He also wanted to know if anything had
12 happened in previous sweat lodges including 2007 and
13 2008, correct?
14 A I don't remember the exact questions he
15 asked. And --
16 Q And that's fair. What I'm asking is he
17 did ask you about the subject of the 2007 sweat
18 lodge; correct?
19 A I can't recall.
20 Q You can't recall that? Okay. Do you
21 remember whether or not he asked you specific
22 questions about the 2008 sweat lodge?
23 A I remember talking about it. So I would
24 guess he asked those specific questions.
25 Q Let me ask you this: And I may be wrong,

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1 Yesterday I saw you and Mr Mercer reviewing what
2 appeared to be the transcript of your previous
3 statement
4 **A. You're wrong.**
5 **Q** You were reading something else?
6 **A. We were editing a book.**
7 **Q.** Okay I'm sorry. I apologize. Have you
8 reviewed your transcript?
9 **A. No.**
10 **Q** Okay I'll provide it to you in a
11 second When Detective Diskin asked you questions
12 on the 9th, you had the events freshest in your mind
13 on that day as well, right?
14 **A. Yes.**
15 **Q.** And at this point, again, you're thinking
16 you haven't given a complete statement; correct?
17 **A. Yes. I wanted to be sure.**
18 **Q.** So you were even more inclusive about
19 facts as you remembered them when you talked to
20 Detective Diskin; is that correct?
21 **A. Yes.**
22 **Q** He also at the end of the interview gave
23 you a business card, is that correct?
24 **A. Yes.**
25 **Q** And so he told you if you think of

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1 anything else, if you've forgotten something, give
2 me a call, right?
3 **A. Yes.**
4 **Q** And after you interviewed with
5 Detective Diskin on the 9th, did you ever pick up
6 the phone and call him again?
7 **A. I believe so.**
8 **Q** And that was in regard to some photographs
9 you gave him, correct?
10 **A. Yes.**
11 **Q** But not to give or add anything to your
12 statement; is that correct?
13 **A. I don't recall.**
14 **Q** All right Now, let me move to the 2007
15 sweat lodge Yesterday you testified under direct
16 examination that there was a man, an older man, with
17 a heart condition Do you remember that?
18 **A. Yes.**
19 **Q** And you said that in 2007 this older man
20 with a heart condition came out of the sweat lodge
21 in medical distress Do you remember that?
22 **A. Yes.**
23 **Q** You also testified yesterday that this man
24 with the heart condition, having come out in a
25 medical distress or in medical distress, jumped into

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1 a creek; is that correct?
2 **A. Yes.**
3 **Q.** Now, you obviously don't have any medical
4 training, correct?
5 **A. No.**
6 **Q** So this is your opinion that he was in
7 medical distress?
8 **A. No.**
9 **Q.** No, it's not your opinion?
10 **A. He told me.**
11 **Q.** Oh. He told you So you had a
12 conversation with him?
13 **A. Yes.**
14 **Q** When did you have this conversation?
15 **A. When he walked up to me and said I have a**
16 **heard condition. I need to get in the water. I**
17 **need to cool down.**
18 **Q.** Where did he say that?
19 **A. Outside of the sweat lodge.**
20 **Q.** Okay So on that day outside the sweat
21 lodge this older man tells you he has a heart
22 condition; is that right?
23 **A. Yes.**
24 **Q.** And that he needs to cool down?
25 **A. Yes.**

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1 **Q.** Now, do you know whether or not it's ideal
2 or it's within the Native American tradition to
3 build sweat lodges near water for the purpose of
4 having people cool off?
5 **A. I'm not aware.**
6 **Q** Okay. So this man says he has an existing
7 heart condition and he needs to cool off. Did he
8 say anything else?
9 **A. He said he didn't know where his shoes**
10 **were and he didn't care. Just get him to the creek.**
11 **Q.** Okay. Did he tell you that he was having
12 a heart attack?
13 **A. No.**
14 **Q.** Did he tell you that he was experiencing
15 convulsions?
16 **A. No.**
17 **Q** Did he tell you that he was experiencing
18 problems with consciousness? unconsciousness?
19 **A. He said he was feeling faint, his heart**
20 **was -- he had a heart condition. I can't remember**
21 **exactly what he said. But he was intent on telling**
22 **me that he had a medical condition and he wanted me**
23 **to guide him to the water.**
24 **Q.** An existing one?
25 **A. Yes.**

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1 Q And so you guided him to the water And
2 he physically was capable of jumping into creek,
3 correct?
4 A No. He didn't jump in. He fell in.
5 Q He just fell in? And then what happened?
6 A One of his friends came over with his
7 shoes, and I left.
8 Q Was he able --
9 A I don't know.
10 Q At the time you were there, when he fell
11 into the creek, did you see him drown, or was he
12 able to wade the water?
13 A The water -- he fell into the side. So
14 wasn't deep enough. I mean, he just fell. And then
15 his friend walked up, and I ran back to the sweat
16 lodge. I don't know what he did in the water.
17 Q Okay So you didn't see any more after
18 that?
19 A No. I got him to the water, and his
20 friend came, and I left.
21 Q You also testified later -- or yesterday
22 that you at some point later spoke to him again, is
23 that correct?
24 A Yes.
25 Q And so you had now two conversations with

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1 this man? Can you tell The Court what his name is?
2 A No.
3 Q You don't remember or you never got it?
4 A Both. I don't know that I ever got it.
5 And if I did, I'm sure I wouldn't remember.
6 Q Now, do you remember whether or not you
7 ever told Detective Diskin about a man with a heart
8 condition who jumped into the creek in 2007 when you
9 spoke to him on the 9th?
10 A Do I remember if I told him that.
11 Q Yeah?
12 A No. I don't remember.
13 Q Is it possible that you never mentioned
14 it?
15 A Yes.
16 Q Is it possible that yesterday was the
17 first time you've told anyone about that?
18 A No.
19 Q You've told the state before; is that
20 correct?
21 A Yes.
22 Q When did you tell them that?
23 A I can't remember if it was in the -- our
24 initial interview. I think it was then. Or -- I
25 can't recall.

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1 Q Okay So you've had subsequent interviews
2 other than with Detective Diskin?
3 A I had -- interviews with who?
4 Q With the state or with the sheriffs.
5 You've given additional statements?
6 A I had an interview with the prosecutor and
7 then a conversation.
8 Q And was it in this interview with the
9 prosecutor that you first mentioned the man with the
10 heart condition who jumped into the creek?
11 A I can't recall.
12 Q All right Let me move on. You also
13 testified yesterday that during the third round of
14 the sweat lodge in 2007 a girl came out and passed
15 out right in the doorway Do you remember that?
16 A Yes.
17 Q And "passed out" meaning unconscious?
18 A Yes.
19 Q She just went unconscious, correct?
20 A Yes.
21 Q Now, since you're not a medical doctor,
22 I'd like to try and understand what you mean when
23 you say "unconscious." Are you -- what are you
24 seeing when you think unconscious?
25 A For that particular girl?

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1 Q Sure.
2 A That particular girl, when she started
3 coming out of the sweat lodge, her eyes were not
4 clear. When she got through the door, she tried to
5 stand up. She fell down flat, was not moving. I
6 rolled her over. Her eyes were rolling, fluttering
7 up back into her head. Drool was coming out of her
8 mouth, and she was bleeding from her face, nose and
9 eye.
10 Q Okay. When somebody comes out -- if I
11 understand correctly, the sweat lodge is quite dark
12 inside Correct?
13 A Back inside. I mean, you can see the
14 pit. You can see people. If I'm sitting at the
15 door, I can see people. I can --
16 Q But if you're inside the sweat lodge and
17 it's during a round, the flap closed, it's pitch
18 dark?
19 A Yes.
20 Q And somebody emerges out of the sweat
21 lodge, they're immediately going from pitch dark to
22 light; correct?
23 A No. Because as you go towards the door,
24 it gets lighter.
25 Q Okay And it's your testimony that she

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1 just passed out and went unconscious at the door, is
2 that correct?
3 **A. Yes. It was clear as she was getting**
4 **close to the door, she wasn't coherent.**
5 **Q All right**
6 **May I have a moment, Your Honor?**
7 **THE WITNESS: But lots of people passed out.**
8 **MS. DO: Counsel, I'm going to direct you to**
9 **the Sheriff's supplemental report 46, Bates stamped**
10 **196.**
11 **May I approach, Your Honor?**
12 **THE COURT: Yes.**
13 **Q BY MS DO: Mrs Mercer, I'm going to show**
14 **you what the state has given to us It's a**
15 **transcript of the statement you gave to**
16 **Detective Diskin on October 9 Okay?**
17 **A. Okay.**
18 **Q I'm going to ask you to read, if you will,**
19 **starting at supplement page 196 where I've indicated**
20 **here down to this line Okay? Let me know when**
21 **you're done.**
22 **A. I might have a problem because I don't**
23 **have my reading glasses.**
24 **Q. Okay Try your best.**
25 **A. The --**

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1 **Q To yourself first.**
2 **(Pause in proceedings)**
3 **THE WITNESS: How far?**
4 **Q BY MS. DO. Just to the end of the page.**
5 **Have you done that?**
6 **A. Yes.**
7 **(Pause in proceedings)**
8 **Q BY MS DO: The portion of the transcript**
9 **I had you read was about your description to**
10 **Detective Diskin of this girl, correct?**
11 **A. Yes.**
12 **Q And having read that, does it refresh your**
13 **memory as to what specifically you told him?**
14 **A. Yes.**
15 **Q. And you told him that this girl came out,**
16 **she tried to stand up before she got out, and she**
17 **fell flat on her face, is that correct? What you**
18 **just read**
19 **A. Yes.**
20 **Q And that she broke her tooth; correct?**
21 **And that her mouth was bleeding, correct?**
22 **A. Yes.**
23 **Q You did not tell Detective Diskin that she**
24 **went unconscious. You said fell flat; correct? In**
25 **the portion you just read**

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1 **A. Correct.**
2 **Q All right. At the time of the sweat lodge**
3 **in 2007, as you described yesterday, you saw -- and**
4 **I can't remember the number -- many folks come out**
5 **and they were in what you called "medical distress",**
6 **correct?**
7 **A. Yes.**
8 **Q. And at the time that you saw this**
9 **happening in 2007, did you think that those folks**
10 **could have died?**
11 **A. I have not experience with heat exposure**
12 **so I don't know. But no. I didn't think they would**
13 **die.**
14 **Q. Okay So -- but based upon what you just**
15 **said, you don't have any experience to tell one way**
16 **or another when someone coming out is showing**
17 **symptoms of heat stroke or hyperthermia; correct?**
18 **A. Correct.**
19 **Q. All right. Now, I'm going to move to the**
20 **2008 sweat lodge. You had indicated yesterday that**
21 **what you saw in 2007 was the same thing that**
22 **happened in 2008; correct?**
23 **A. In regard to?**
24 **Q The disaster that you described.**
25 **A. Yes.**

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1 **Q Okay. And, by the way, after the 2007**
2 **sweat lodge ended and you indicated, I think, to**
3 **Ms Polk yesterday that you were just shocked at**
4 **what you saw; correct?**
5 **A. Yes.**
6 **Q. You must have then at that point -- you**
7 **didn't call 911, I understand; correct?**
8 **A. Correct.**
9 **Q. But you must have at that point ran up to**
10 **the office and grabbed Amayra or Michael Hamilton;**
11 **correct?**
12 **A. No.**
13 **Q. You didn't. So did you ever tell them in**
14 **the year 2007 that this has occurred at James Ray's**
15 **sweat lodge and it was really alarming to you in**
16 **2007?**
17 **A. I can't remember if it was -- Amayra came**
18 **by in 2007. She knew what was on. She actually**
19 **brought down ice and aid for the girl's face.**
20 **Q The one that fell?**
21 **A. Yes.**
22 **Q Now, if Miss Amayra Hamilton testified**
23 **that when she was down at the 2007 sweat lodge and**
24 **she saw no problems, 2007 was fine, would that be**
25 **not correct?**

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1 MS. POLK: Judge, objection to the
2 mischaracterization of the testimony of Amayra
3 Hamilton.

4 THE COURT: The question may stand as a
5 hypothetical.

6 You may answer that if you can.

7 THE WITNESS: What?

8 Q BY MS DO If Mrs Amayra Hamilton
9 testified that she went down to the 2007 sweat lodge
10 and from what she saw there weren't any problems,
11 would that be inaccurate?

12 A In my opinion.

13 Q Would that be untruthful?

14 A I couldn't say if it's -- I mean, what one
15 person thinks is -- I don't know.

16 Q Certainly inconsistent with what you saw?

17 A Yes. But she had experienced sweat lodges
18 before. I hadn't.

19 Q So are you saying that perhaps because you
20 hadn't experienced sweat lodges, what you saw was
21 normal but to you not having been in a sweat lodge
22 before, it wasn't normal?

23 A Yes.

24 Q All right Now, when Mrs Hamilton -- so
25 you're saying for whatever reason you did not tell

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1 Mrs Hamilton that 2007 was a disaster and 911
2 should have been called? Did you ever tell her
3 that?

4 A No.

5 Q All right So after this happened and you
6 thought 911 should have been called, you went back
7 the next year to work another sweat lodge for
8 Mr. Ray, is that correct?

9 A Yes.

10 Q And you volunteered?

11 A Yes.

12 Q You didn't get paid?

13 A My husband was getting paid, and I
14 volunteered.

15 Q Oh. I thought earlier when I asked you,
16 you and Ted volunteered for 2008. That's not
17 correct?

18 A No. Ted was an employee in Angel Valley
19 in 2008.

20 Q Okay So Mrs Hamilton said he
21 volunteered in 2008, that would also be incorrect?

22 MS. POLK: Same objection.

23 THE COURT: That part of the testimony I'm
24 pretty sure I remember. And I don't think that's
25 accurate.

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1 MS. DO: Thank you.

2 Q When you went back in 2008 -- and I
3 apologize for my cough -- when you went back in
4 2008, you personally were not being paid, so you did
5 it strictly on a volunteer basis; is that correct?

6 A Correct.

7 Q So when you knew James Ray was coming back
8 to Angel Valley, having seen what you say you saw in
9 2007, you certainly then warned Amayra Hamilton;
10 correct?

11 A No.

12 Q You didn't say anything to her?

13 A Regarding?

14 Q What you had seen. What you say you saw
15 at the 2007.

16 A She was there in 2007. So yes. No.

17 Q Okay Thank you So then the 2008 sweat
18 lodge you said was -- and I might be paraphrasing --
19 exactly the same or the same as 2007 -- correct? --
20 what happened at the end of the ceremony?

21 A Yes.

22 Q So it was as horrific and shocking to you
23 as 2007?

24 A Yes.

25 Q It scared you quite a bit?

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1 A Yes.

2 Q And you talked to Detective Diskin about
3 the 2008 sweat lodge on October 9, didn't you?

4 A I don't recall. Probably. Yeah.

5 Q Okay Let me help you with that.

6 Counsel, I'm referring to the same
7 supplement This time it's Bates stamp 195.

8 May I approach again?

9 THE COURT: Yes.

10 Q BY MS. DO. I'm going to show you a page
11 that's been Bates stamped by the state as 195 and
12 ask you to read this paragraph over here. I'll hand
13 you these glasses.

14 A That paragraph?

15 Q Yes And just let me know when you're
16 done.

17 A I'm done.

18 Q You're done?

19 A Yes.

20 Q So does that help you remember that you,
21 in fact, did talk to Detective Diskin about the 2008
22 sweat lodge?

23 A Uh-huh.

24 Q Is that yes?

25 A Yes.

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1 Q All right And you told Detective Diskin
2 that there were 40 people you know all across
3 those -- and I assume that's the ground -- just
4 laying there -- you know -- convulsing, throwing up,
5 crying, eyes rolling back in their head and there is
6 nobody there to care for them, is that correct?

7 A Yes.

8 Q And, again, having seen that occur, you
9 thought, in your mind, 911 should be called?

10 A I wouldn't say I thought that 911 should
11 be called for those instances. I would say, in my
12 opinion, that's a dangerous situation.

13 Q That you would call 911 for?

14 A I wouldn't put the people in the
15 situation --

16 Q I understand That's not my question
17 It's having seen this as a witness --

18 A At least I would think they would have
19 medical assistance or first aid or an ambulance --
20 you know -- standing on by, in my opinion, is what
21 should have been there.

22 Q I understand And that's because you saw
23 about 40 people in convulsions, throwing up, crying,
24 eyes rolling back?

25 A Yes.

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1 Q And you said paramedics and medical help
2 would require someone to call 911; correct?

3 A Yes.

4 Q And again in 2008 you did not?

5 A Yes.

6 Q Ted did not?

7 A Yes.

8 Q And Mr Palisch, who was there, did not;
9 correct?

10 A Correct.

11 Q Now, how long would you say that those 40
12 people or so were laying across the ground in that
13 state that you've described as medical distress?

14 A Various lengths. Some people left right
15 away. Other people stayed half an hour. But they
16 had something else to do right afterwards. So if
17 someone had a roommate, they would -- you know --
18 help them get them to their room. But generally
19 half an hour.

20 Q Okay But some people actually left
21 before the half hour, you're saying?

22 A Yes.

23 Q So some people just got up from whatever
24 condition you say they were in and were able to walk
25 by themselves back to their room?

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1 A Yeah. Or we would ride people in carts
2 too. We had a couple golf carts, and we would give
3 them rides back to their room.

4 Q You did that?

5 A Me and, like, my daughter or Fawn.

6 Q Okay And so while you're doing that, are
7 you away from the scene?

8 A Talking 2008?

9 Q Yes.

10 A Yes.

11 Q While you're doing that, you would be away
12 from the scene, correct?

13 A Yes.

14 Q Let me ask you specifically. You
15 yesterday talked about a girl that went into
16 convulsions. Do you remember that?

17 A Yes.

18 Q And, again, because you're not a doctor, I
19 want to understand what you mean when you say
20 "convulsions." What are convulsions?

21 A I think I said she went into shock.

22 Q What does that mean?

23 A Well, that's what the doctor that was
24 there said, that she was in shock. But what I was
25 seeing was a girl who would spasm up, have no

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1 control of her body. Her eyes were rolling in her
2 head. Then she'd come out of it and crying and be
3 somewhat coherent. But still her body would tense
4 up. She had no control over her body.

5 Q Was she on the ground when this was
6 happening?

7 A Initially. And then they put her in a
8 cart and took her to --

9 Q I'm going to get to that. But when you
10 say you saw what you think were convulsions, was she
11 on the ground?

12 A Yes.

13 Q And she was visibly -- are you talking a
14 little bit of shakes or was she really shaking?

15 A Not shaking. She was -- like her body
16 would tense up like if someone is having an
17 epileptic seizure -- you know. Something where --

18 Q Okay. So that's what -- you would
19 describe it as an epileptic seizure?

20 A No. I would describe the muscles
21 constricting -- her muscles were constricting out of
22 her control.

23 Q I understand now And, for the record,
24 you had taken both of your arms, clenched both of
25 your fists, had it about mid chest. Was that what

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1 you saw?

2 A. She was rolled up in a ball -- you know --
3 like this. Other times she'd be like this. She did
4 not have control of her body.

5 Q. I understand. But both times you, again,
6 indicated clenched fists; correct?

7 A. Yes. Clenched muscles. I mean, her
8 fists -- her muscles were convulsing in a way that
9 were out of her control.

10 Q. I'm not trying to put words in your
11 mouth. Did she have clenched fists or did she or
12 not?

13 A. Probably.

14 Q. Okay. Now, you said that there was a
15 doctor participant there; correct?

16 A. Yes.

17 Q. Now, what was the name of the doctor
18 participant, if you know?

19 A. Don't know.

20 Q. Don't know. Was it a male or female?

21 A. Male.

22 Q. Can you give me a description?

23 A. No.

24 Q. So --

25 A. There is a lot of commotion going on and a

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1 lot of people. No. I don't remember what he looked
2 like.

3 Q. Okay. How did you know he was a doctor?

4 A. He said he was.

5 Q. When did he tell you?

6 A. I don't know if he told me specifically.

7 But he walked up when I think one of the Dream
8 Team -- I don't remember exactly how it happened.
9 One of the Dream Team and I think her roommate got

10 her into the golf cart. And then somebody said they
11 were -- the guy said he was a doctor. And he went
12 with them, and then they all got them into a
13 bathroom, and I left.

14 Q. I really want to try to understand what
15 you're saying. You're at the scene. You see this
16 woman in what you described or believed to be
17 convulsions. An unidentified man that you can't
18 give a description comes up and tells somebody he's
19 a doctor; correct?

20 A. He told the group. There were several of
21 us around trying to help her.

22 Q. All right. And you're certain of that?

23 A. Yeah.

24 Q. Okay. And you've given that information
25 to Detective Diskin?

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1 A. I don't recall. I don't think he asked
2 those specific questions. You're getting into very
3 much detail and asking me if I answered that
4 question. And I --

5 Q. Details are important. And I'm sorry.
6 Let me ask you the next question. When you say they
7 put her into the golf cart with Dream Team members,
8 did you go into the cart?

9 A. I think I went in a different cart.

10 Q. Okay. You followed and you physically saw
11 this woman in a bathtub?

12 A. Yes.

13 Q. Okay. And can you tell me what this
14 woman's name was?

15 A. No.

16 Q. Can you give me a description?

17 A. No.

18 Q. The woman that was in the bathtub -- how
19 long did she stay there?

20 A. I don't know. I left.

21 Q. So you left immediately; correct?

22 A. Once she was in the bathtub, yes.

23 Q. So for all you know, she was in the
24 bathtub for half a second?

25 A. Yes.

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1 Q. Firsthand knowledge; correct? And I
2 think --

3 A. Yes.

4 Q. And I think what we've been hearing is
5 that shortly or immediately after a sweat lodge
6 ends, Mr. Ray, first of all, is always the first one
7 to exit. Correct?

8 A. Yes.

9 Q. Being that he sits right next to the
10 door? Yes?

11 A. Yes.

12 Q. And in the year 2007, as the year 2008, he
13 gets out of the sweat lodge and he immediately gets
14 in a golf cart and he leaves; correct?

15 A. No.

16 Q. No?

17 A. No.

18 Q. He stays around?

19 A. Yes.

20 Q. That's your testimony?

21 A. He stays around a few minutes. Yes. He

22 doesn't, like, get out of the golf cart -- I mean

23 get out of the sweat lodge and get directly into a

24 golf cart. He gets out, stands around, drinks some

25 water. He's usually separate from the crowd. He's

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1 not over talking to the people. Although sometimes

2 I remember seeing him talking to people.

3 Q So he's away from the crowd is what you're
4 saying?

5 A For the most part. When he gets out, he
6 goes and gets a drink of water. People start coming
7 out. He talks to them a little bit. But then he's
8 usually in a different area. People will come over
9 and talk to him and stuff.

10 Q I understand

11 A But he's usually --

12 Q So for the average time, you would say
13 he'd be out for a few minutes, and then he gets in a
14 his golf cart and he'd leave, correct?

15 A Yes.

16 Q And did you know whether that was because
17 he had to get ready for the next event the group
18 would be attending or not?

19 A I don't know.

20 Q No idea; right?

21 A No.

22 Q So you wouldn't be able to tell the Court
23 why Mr. Ray would leave the scene in 2007-2008
24 immediately after getting out of the sweat lodge;
25 correct?

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1 A I didn't say he left immediately after the
2 sweat lodge. I said he stayed around and then at
3 some point him and -- I saw a Dream Team member
4 once. But I really don't know that I noticed when
5 James Ray left the area.

6 Q Okay I understand I didn't mean to
7 misstate what you've said You said for a few
8 minutes he'd stay around, then he would leave?

9 A Like everyone else. They leave.

10 Q Like everyone else, correct?

11 A Yes.

12 Q It's not a specific thing that Mr. Ray was
13 being callous when he was leaving? He was leaving
14 like everyone else, correct?

15 A There was nothing after the lodge to make
16 people stay a certain amount of time or tell you to
17 leave at a certain amount of time. When you felt
18 ready to leave as a participant, you left.

19 Q So --

20 A I don't know what James Ray -- when he
21 left, why he chose when he left to leave.

22 Q Understood But from what you saw, he did
23 what every other participant who was ready to leave
24 did, correct?

25 A Yes. But he's a leader. He's not a

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1 participant.

2 Q Now, so when this incident occurred that
3 you described, this woman who then was put into a
4 golf cart and went to the bathtub, was Mr. Ray
5 around for that?

6 A I don't recall where he was. But I know
7 he wasn't in my immediate area wondering how she
8 was.

9 Q All right. So --

10 A I think she had short, dark hair. That
11 just came into my head.

12 Q For all you know, Mr. Ray did not see
13 that; correct?

14 A I don't know.

15 Q For all you know, he didn't know? One way
16 or another, you don't know?

17 A I don't know.

18 Q Okay. Now --

19 A I know his Dream Team knew.

20 Q I understand That wasn't my question.
21 Now, in 2008 when you saw the scene that you've
22 described which, in your opinion, was the same as
23 the scene in 2007, did you think these people could
24 die?

25 A I can't answer that question. I mean --

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1 Q You don't have the background --

2 MS. POLK: Could Ms. Do please let the witness
3 finish answering the question before he she
4 continues.

5 MS. DO: Sure. I'm sorry. I thought she was.

6 Q Go ahead.

7 A I don't know how to answer that question
8 because anyone can die at any point. But the --
9 what they go through in that -- it's a possibility.
10 Yes.

11 Q And you thought that in 2008; correct?

12 A I can't say I went in there thinking --
13 you know -- somebody is going to die.

14 Q At the end when you saw what you say you
15 saw?

16 A No. I don't think anyone was going to die
17 at that point. No.

18 Q Which is the reason you didn't call 911;
19 correct?

20 A Yeah. And I don't -- like the Dream Team
21 and James Ray control --

22 Q They're responsible?

23 A Yeah.

24 MS. POLK: Judge, same objection. Could the
25 witness please finish answering the question before

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1 Ms. Do jumps in?
 2 MS. DO: I'm sorry.
 3 THE COURT: Yes.
 4 Q BY MS DO Go ahead, Miss Mercer I'm
 5 sorry Go ahead
 6 A Yes. If -- normally it would be out of --
 7 I mean, I wouldn't call 911 without telling someone
 8 first unless I was the only one at the scene and --
 9 you know -- it was my only reaction.
 10 Q So you wouldn't call -- if you saw people
 11 that you thought could die, you would not call 911
 12 unless you were there by yourself?
 13 A Well --
 14 Q Is that what you're -- I'm trying to
 15 understand what you're saying
 16 A Can you rephrase the question, please.
 17 Q Sure Let me ask it this way --
 18 A I don't understand what you're trying to
 19 say.
 20 Q I'm asking a question, not trying to say
 21 something If you were to go down -- if you're just
 22 walking down the street somewhere and you see
 23 someone in the condition you describe -- they're in
 24 convulsions, they're throwing up, they're crying --
 25 wouldn't you call 911?

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1 A. No. Because I don't know what their
 2 situation is. I mean, that's coming up on someone
 3 blind. In the sweat lodges it was an experience
 4 that we had done before.
 5 Q But in 2007 you hadn't
 6 A No. And it was a shock.
 7 Q And you thought people were in bad shape
 8 enough that 911 should have been called?
 9 A In my opinion.
 10 Q Okay Now -- so the same thing in 2008
 11 You did not call 911, correct?
 12 A No.
 13 Q You didn't turn to Ted Mercer and say --
 14 A No.
 15 Q And say call 911, correct?
 16 A Correct.
 17 Q Also Mr. Palisch, correct?
 18 A Yes.
 19 Q Now, let me ask you some questions about
 20 Mr Palisch for just a moment You've known him for
 21 at least a couple of years; correct? Or more?
 22 A Now? You're saying now?
 23 Q As of 2009 how long had you known
 24 Mr Palisch?
 25 A Yeah. Two years.

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1 Q And was he someone that you considered
 2 close?
 3 A Yes.
 4 Q. You guys were close friends; correct?
 5 A. Yes.
 6 Q And if I understand correctly, Mr Palisch
 7 was either part or full Native American Is that
 8 correct?
 9 A I believe so.
 10 Q And he had experience doing sweat lodges,
 11 much more experience than you or Ted did; correct?
 12 A. Yes.
 13 Q. And so he has not only facilitated,
 14 conducted, he's participated in the sweat lodges
 15 himself; correct?
 16 A In traditional sweat lodges, not in James
 17 Ray sweat lodges.
 18 Q Understood
 19 A. Yes.
 20 Q. Now, Mr. Palisch was there in 2007. And,
 21 to your knowledge, he didn't call 911; correct?
 22 A. No.
 23 Q. Mr. Palisch was there in 2008 and, to your
 24 knowledge, he did not call 911; correct?
 25 A. No.

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1 Q. Did you in 2008 after having seen yet
 2 again the scene that you've described -- did you
 3 tell Mrs. Hamilton right then and there what was
 4 going on?
 5 A. Mrs. Hamilton was there. And I don't have
 6 a lot of conversations with her. So no.
 7 Q. You live on her property and you've worked
 8 for her some years --
 9 A. It's not her property. Where I lived was
 10 not her property. It's a separate property enclosed
 11 in Angel Valley. But it's a separate property I
 12 rented from somebody else.
 13 Q. Thank you. I understand that. But it's
 14 on Angel Valley; correct?
 15 A. Yes.
 16 Q And your testimony was that you didn't
 17 have many conversations with her, is that correct?
 18 A I would try to avoid conversations.
 19 Q. Why was that?
 20 A I personally don't get along with Amayra.
 21 Q. Okay Now -- so you didn't think that it
 22 was important to make an exception to that having
 23 seen this now occur twice, two years in a row, to
 24 tell Mrs. Hamilton this is what's going on with
 25 James Ray sweat lodges?

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1 A. My feeling is Amayra Hamilton knows
2 exactly what goes on in James Ray sweat lodges.
3 Q. Okay Let me ask you the question again.
4 Did you tell Mrs Hamilton yourself?
5 A. There would be no need. She knows. No, I
6 did not.
7 Q Thank you. I just have this last area
8 that I'd like to ask you questions, Mrs Mercer, and
9 then we'll be done
10 Does the Court want to take a break or are
11 we okay on time?
12 THE COURT: We did have one recess. Another 5
13 or 10 minutes?
14 MS. DO: Sure.
15 THE COURT: Go ahead.
16 MS. DO: Okay.
17 Q. Now, on October 9 you talked to
18 Detective Diskin, Mrs Mercer You described to him
19 the 2008 scene, and you testified it was 40 people
20 in convulsions, throwing up, crying, et cetera,
21 correct?
22 A. Yes.
23 Q And you told him that you had photographs
24 that would depict that scene, correct?
25 A. Yes.

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1 Q And that's the excerpt that I just had you
2 read You told him I have photographs that will
3 show you 40 people laying across the ground in
4 convulsions, throwing up, crying, eyes rolled back;
5 correct? Yes?
6 A. Yes.
7 Q And so you -- by the way, were these
8 photographs ones that you took?
9 A. Yes.
10 Q All right. And so you told
11 Detective Diskin on October 9 that you had,
12 essentially, evidence -- right? -- of what happened
13 in 2008?
14 A. I told him I had pictures of buildings. I
15 told him I had pictures of the sweat lodge happening
16 and -- yeah.
17 Q Mrs. Mercer, you told Detective Diskin --
18 and if you'd like I can show it to you again -- I
19 can show you pictures of previous lodges where there
20 is 40 people -- you know -- all across those just
21 laying there -- you know -- convulsing, throwing up,
22 crying, eyes rolling back in their heads, and there
23 is nobody there to care for them, correct?
24 A. Yes.
25 Q And you later on again said to

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1 Detective Diskin that the pictures would show him
2 exactly what you had seen in '08, which was the same
3 as '07, correct?
4 A. Yes.
5 Q These are photos you took?
6 A. Uh-huh.
7 Q Yes. Okay. You didn't tell
8 Detective Diskin that the photos you were going to
9 forward to him were photos of people recovering,
10 correct? That's not how you described the photos
11 you had, correct?
12 A. I can't recall. I mean, I know it's in
13 that thing. But when I was saying I had pictures, I
14 knew I had pictures of the event, which would
15 include --
16 Q. Miss Mercer, you said --
17 MS. POLK: Your Honor, same objection. Could
18 she finish her answer.
19 THE COURT: Go ahead and finish your answer,
20 ma'am.
21 THE WITNESS: The pictures I had would show
22 people in distress as well as the sweat lodge before
23 and the wood. He was asking questions about the
24 type of wood that was used and the fire. So I know
25 the pictures that I had would show all of that.

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1 Yes.
2 Q BY MS. DO: Okay So in addition, you
3 gave him photos that showed -- and I think Ms. Polk
4 has shown it -- of the frame, of the kiva; correct?
5 A. Yeah.
6 Q. Okay And some photos of the sweat lodge
7 finished -- right? -- with the blankets and tarps
8 over it?
9 A. Yes.
10 Q But the photographs of the participants
11 coming out of the sweat lodge. That's what I want
12 to focus on. You told Detective Diskin that those
13 photos would show exactly 40 people laying across
14 the ground in convulsions, throwing up, vomiting,
15 crying, eyes rolled back; correct?
16 A. That's what the statement says.
17 Q. Well, it's a taped statement That's what
18 you said; correct?
19 A. Yes.
20 Q You didn't tell Detective Diskin I'm going
21 to forward you photographs of people having
22 recovered, people -- right? Did you or did you not?
23 A. Not at that time. But in a phone
24 conversation I told him. After looking at the
25 pictures, I told him the pictures that I had.

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1 Q Okay.
2 Your Honor, can we take the break now?
3 THE COURT: Yes. We can do that.
4 And take the recess.
5 Miss Mercer, please remember the rule of
6 exclusion I explained to you before. And let's
7 resume at five after 11:00. Thank you.
8 (Recess)
9 THE COURT: The record will show the presence
10 of the attorneys. The witness has returned to the
11 witness stand.
12 You may continue cross-examination,
13 Ms. Do.
14 MS. DO: Thank you.
15 Q When we took the break, Mrs Mercer, we
16 were talking about the photographs you gave to
17 Detective Diskin?
18 A. Yes.
19 Q. And these were photographs you indicated
20 to him would show the 40 or so people in convulsions
21 and throwing up, crying?
22 A. Yes.
23 Q Okay. I'm going to hand you eight
24 photographs that have been previously identified and
25 admitted, I believe, exhibits -- I'm sorry. Excuse

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1 me 71 through 78. Okay? Just take a look at
2 those and let me know if you recognize those as the
3 photographs you gave to Detective Diskin
4 A. Yes.
5 Q You've had a chance to review them all?
6 A. Yes.
7 Q. And those are, in fact, the photographs
8 you gave to Detective Diskin?
9 A. Yes.
10 Q And in addition to those, you gave a few
11 more that showed the kiva being built, correct?
12 A. Yes.
13 Q Now, you took these photographs, correct?
14 A. Yes.
15 Q Were there any photographs you took of the
16 scene after people came out of the sweat lodge that
17 you did not provide to Detective Diskin?
18 A. Not that I'm aware of.
19 Q. You believe you gave him all the
20 photographs, correct?
21 A. Yes.
22 Q Now, I'm going to show you another set of
23 photographs that were previously marked as exhibits
24 34 through 70 And take a quick look at those
25 MS POLK: Your Honor?

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1 THE COURT: Yes?
2 MS. POLK: There is a photograph on the
3 overhead that is -- has a different number on it
4 than the photograph that the witness is looking at.
5 I would just request that the photographs that have
6 been admitted into evidence be used and not
7 photographs that are -- I don't challenge that
8 similar photographs have been admitted, but defense
9 71 is not one of our exhibit numbers.
10 MS. DO: We made all the corrections
11 yesterday. And perhaps the clerk can verify this.
12 And the exhibit tags that are the ones that
13 Mrs. Mercer is going through are consistent with
14 what's on the screen now.
15 THE WITNESS: I don't think these are my
16 pictures of all these people close up.
17 Q. BY MS DO. I understand. I'm just asking
18 you to look through them for now
19 A. Oh.
20 THE COURT: You indicated that was 34 through
21 70?
22 MS. DO: I'm sorry, Your Honor. The Court's
23 tab number for 71 through 78 would be tab 38 to 45.
24 And then the exhibits 34 through 70 are the Court's
25 tabs 1 through 37 in the binder.

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1 THE COURT: Okay.
2 MS. DO: I apologize. I think we didn't
3 understand the rules, and we'll remember it next
4 time.
5 THE COURT: I'm following with Ms. Polk's
6 concern. A number of these exhibits have already
7 been admitted. But the numbers you gave me were not
8 the actual exhibit numbers that appear on the back.
9 These have all been marked now; is that right?
10 MS. DO: Yes.
11 THE COURT: What are they marked on the back?
12 That's what I need to know.
13 MS. DO: As what's on the screen.
14 THE COURT: Okay.
15 Ms. Polk, you're saying this is an
16 unadmitted exhibit?
17 MS. POLK: No, Judge. I'm just confused. We
18 have exhibits that have been admitted, and on the
19 screen from Ms. Do's laptop is a photograph. It's
20 not the exhibit that's been admitted. It may be
21 identical to the one that's admitted. I'm just
22 confused. She's not using exhibits that have been
23 admitted here in court. She's using copies that are
24 from her laptop again, they may be identical. I'm
25 just confused about what we're looking at and what

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1 exhibit number.

2 MS. DO: I don't think it would be any
3 different if I took this exhibit and put it on the
4 doc cam as opposed to feeding through my laptop.
5 The witness can verify it's the same photo we're
6 looking at, Your Honor.

7 THE COURT: Let's just use the overhead and do
8 that so we know what exhibits we have. I just don't
9 want -- if there is any confusion about this, let's
10 just eliminate it.

11 MS. DO: It will take me a moment to switch
12 over.

13 Q Miss Mercer, you've had a chance to look
14 at the photographs that you yourself took and
15 provided to Detective Diskin, correct?

16 A Yes.

17 Q And I also handed you a number of other
18 photographs that you did not take, correct?

19 A Yes.

20 Q And those were exhibits 34 through 70, for
21 the record From looking through the additional
22 photographs I gave you, did it appear to you that
23 those were photographs of the scene that you were
24 photographing, that is, the end of the 2008 sweat
25 lodge?

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1 A Yes. Although, I would add that that's
2 probably at a later time -- you know -- maybe half
3 an hour later Because it looks like people are up
4 and moving around, which is -- you know -- takes
5 time.

6 Q All right Let's go through them, then
7 You have here what's been marked as exhibit -- the
8 Court has marked as Exhibit 71

9 A Uh-huh.

10 Q And can you tell in this photograph that
11 you told Detective Diskin would show you the 40
12 people in convulsions, throwing up, in the state of
13 medical distress, which one of these people are you
14 referring to?

15 A The ones laying on the ground and the ones
16 you can't see over in that tented area.

17 Q Okay So if you can -- I think if you
18 touch the screen, it will make a marking that
19 everyone can see Can you using your finger touch
20 the people that you think are in the condition
21 you've described.

22 A Described as?

23 Q Convulsions, throwing up, vomiting.

24 A Well, obviously they're not every one of
25 them. But they're in -- obviously not every one of

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1 them is in convulsions, but they're in various
2 states of medical distress, I would say.

3 Q Okay So go ahead and point to it. Now,
4 with your finger you've managed to roll up two
5 yellow arrows, and you've indicated on Exhibit 71
6 the two folks that are laying on the ground in the
7 middle of the photograph; correct?

8 A Yes.

9 Q Let me stop you there for a second. At
10 the time that you took this photograph -- you took
11 this photograph, correct?

12 A Yes.

13 Q At the time you took this photograph, you
14 actually thought that these two people were were on
15 the ground -- did you think they were unconscious?

16 A There were some people -- these two people
17 I don't know if they were unconscious in this
18 picture. There were people in the scene who were
19 unconscious.

20 Q Who in this?

21 A I don't -- I mean, I can't tell from the
22 picture who was unconscious. I can't recall the
23 people, if that's what you're asking me to say is
24 who is unconscious. From looking at this picture, I
25 can't tell you that.

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1 Q Well, you did tell Detective Diskin you
2 had these photographs that would show the 40 people
3 in the medical distress, the state of medical
4 distress that you saw, correct?

5 A Yes.

6 Q And so you were giving him these
7 photographs to assist him in understanding what
8 these people looked like, as you described them, in
9 medical distress?

10 A My intention of giving him those
11 photographs was to paint -- so he could see what I
12 saw.

13 Q Okay. What you saw.

14 A It was to show him what I saw. The number
15 40 people in convulsions, you're taking it and
16 saying I said 40 people and I said they were in
17 convulsions -- when I said I have a picture of 40
18 people, I didn't mean that I counted every person
19 and there were 40 people and that each person was
20 unconscious. That wasn't what my -- what I intended
21 my testimony to be.

22 And my intention for giving him the
23 pictures was to show him people in various states of
24 distress, some being unconscious, some being in
25 convulsions, some being okay because they had either

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1 sat out for most of the lodge or had been through
2 the lodge.
3 Q Okay
4 A So some of the people you're looking at
5 were not in the lodge for the majority of it.
6 Q I understand And we're going to go
7 through that I didn't choose the number 40 You
8 did So are you saying when you told
9 Detective Diskin that there were 40 people, and you
10 will see them in those photos, was that an
11 exaggeration?
12 A That was a generalization.
13 Q Not an exaggeration?
14 A Yes.
15 Q So how many people do you think now were
16 in that state that you have described?
17 A I don't understand the question.
18 Q Well, you said it was a generalization;
19 correct?
20 A Yes.
21 Q And since you're saying it's not really
22 40, it was an over generalization, correct?
23 A No. I didn't say it was an over
24 generalization. I said it was a generalization that
25 I knew how many people went into the sweat lodge and

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1 that about 40 of them were not the picture of health
2 and they were in some various states of medical
3 distress.
4 Q Okay. I'm not going to read that excerpt
5 back to you, but you did tell him the pictures would
6 show 40 people in convulsions, throwing up
7 A Okay.
8 Q So let's look at this photograph,
9 Exhibit 71 You already indicated the two people on
10 the ground were people that you would describe as
11 being in medical distress; correct?
12 A Yes.
13 Q Who else in this photograph?
14 Now you've indicated three -- slow down
15 for a second Sorry I'm trying to narrate so we
16 have a clear record You have now indicated three
17 additional people in the background to the right of
18 the photograph, correct?
19 A Yes.
20 Q And then you've also put two more markings
21 to the background of the photograph in the -- on the
22 left side of the photograph, is that correct?
23 A Yes.
24 Q Now, in this picture with what you've --
25 now one, two, three, five, seven people in medical

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1 distress, you stood there and took a photograph, is
2 that correct?
3 A Yes.
4 Q So instead of calling 911, you stood there
5 and you took a photograph?
6 A Yes.
7 Q All right. Do you see the man right here
8 that I just put an arrow on?
9 A No, I didn't. Oh. Yeah.
10 Q I indicated a man to the far left of the
11 photograph. He's standing without a shirt, shaved
12 head He's holding a camera; correct?
13 A I can't see.
14 Q Do you want your glasses -- Mr. Kelly's
15 glasses?
16 A You're talking about the guy you put the
17 arrow on? He's got a camera?
18 Q Yes.
19 A It looks like it. Yes.
20 Q Okay I can zoom in. Do you want me to
21 do that?
22 A I guess it's a camera. Yes.
23 Q Okay And he's taking a photograph of the
24 two people that you put an arrow, the ones laying on
25 the ground plus the woman who is sitting on her --

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1 A I don't know who he's taking a picture of.
2 Q Does it appear that he's directing the
3 camera at their general location, Mrs Mercer?
4 A Yes.
5 Q And the person that I'm now putting an
6 arrow on, this woman, or a dot --
7 A Yes.
8 Q She's sitting on her buttocks with her
9 knees up, and she's propped herself up with her arms
10 or biceps; correct?
11 A Yes.
12 Q Do you see a smile on her face?
13 A Yes. Happy it's over.
14 Q Do you see a smile on her face?
15 A Yes.
16 Q Okay Did you say something else?
17 A I said I think she's happy it's over.
18 Q Okay You think she happy it's over?
19 A That was my interpretation of the smile.
20 Yes.
21 Q So when you stood here and took this
22 photograph of the seven people you say are in
23 medical distress, did you think about putting your
24 camera down and going and assisting any of these
25 people?

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1 A. Like I said, this picture was probably
2 half hour later whether people are -- you know --
3 some people had left, and people are obviously
4 getting up and getting their belongings and --
5 because those are off to the side. So no --
6 What was the question?
7 Q. There wasn't one I think
8 A. Just babbling.
9 Q. Let me go to Exhibit 72, which is another
10 photograph you took, correct?
11 A. Yes.
12 Q. Again, the man that I've just put a yellow
13 dot on, same guy from the earlier picture taking yet
14 another photograph?
15 A. Yes.
16 Q. And you standing among in this scene also
17 taking photographs?
18 A. Yes.
19 Q. Exhibit 73. You took this photograph
20 too?
21 A. Yes.
22 Q. And in this photograph it appears that
23 there are about seven people -- four women who are
24 sitting sort of in a circle and three other people
25 laying down in various positions; correct?

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1 A. Yes.
2 Q. And so you stood there and you took this
3 photograph of these people that you thought were in
4 medical distress?
5 A. Yes.
6 Q. Rather than call 911?
7 A. Yes.
8 Q. Rather than go up and get Amayra Hamilton
9 to come down?
10 A. Yes.
11 Q. Rather than tell Mr. Mercer to call 911?
12 A. Yes.
13 Q. Exhibit 74. Another one you took?
14 A. Yes.
15 Q. Who in this photograph do you think is
16 experiencing convulsions or throwing up or crying?
17 A. As I said, this was a while after. I
18 would say this person sitting down over behind the
19 fellow -- this person.
20 Q. You've indicated someone on the far right
21 who we see --
22 A. The far right and the far left.
23 Q. Okay.
24 A. Yes. If they have a towel on their head,
25 they're not feeling good.

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1 Q. That's your testimony?
2 A. Yes.
3 Q. Okay. It might not just be because
4 they're cooling off?
5 A. No.
6 Q. Now again, you said --
7 A. The towel wasn't cool.
8 Q. You stood there with -- now in photograph
9 74 -- with about two people you've identified as
10 medical distress and just took photographs?
11 A. Yes.
12 Q. And would that be consistent if I asked
13 you the same questions as to the remainder of the
14 photographs you took?
15 A. Would what be consistent?
16 Q. With watching what you say you saw as
17 medical distress, you just stood there and took
18 photographs?
19 A. Yes.
20 Q. Okay.
21 A. That was after. I mean --
22 Q. I understand.
23 A. It was a considerable time after the sweat
24 lodge was over that those pictures were taken. I'd
25 say half an hour.

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1 Q. That's what you're testimony is today. On
2 October 9 you told Detective Diskin that they were
3 photographs of the scene that you described as being
4 the disaster; correct?
5 A. Yeah. But I don't think I specified how
6 long the picture -- you know -- how long it was
7 after -- I don't think I told him how long it was
8 after the sweat lodge was over that I took the
9 pictures. But I know it was at least half an hour
10 because I was -- you know -- I was feeling like I
11 was done. And the one girl that was there helping
12 was from Australia -- Switzerland. And she wanted
13 pictures of the crazy Americans.
14 Q. Okay. Mrs. Mercer, when you spoke to
15 Detective Pam Edgerton on October 8 at the
16 hospital --
17 A. Yes.
18 Q. -- you talked about much more than what
19 we've already heard today -- correct? -- about
20 hearing the moaning and groaning inside the sweat
21 lodge, groaning inside the sweat lodge that was
22 normal and usual to you, correct?
23 A. For James Ray's, yes.
24 Q. Okay. Detective Edgerton also asked you
25 about the fact that you had done the sweat lodge

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1 with James Ray in 2007 and 2008, and this would have
2 been your third year, correct?

3 A. Yes.

4 Q And she also asked you and Mr Mercer,
5 your husband -- you were both there giving the same
6 statement, essentially, correct?

7 A. Yes.

8 Q You finishing his sentences?

9 A. Yeah. It didn't seem like a real
10 interview. It was more like she just wanted to see
11 what had happened. It didn't feel like an interview
12 where I was supposed to say everything I knew in as
13 much detail as Detective Diskin and the prosecutor
14 has asked.

15 Q Okay So you knew she wanted to know what
16 happened on October 8, 2009, right?

17 A. I knew she was trying to figure out what
18 happened. Yeah.

19 Q. She wanted to know what caused these three
20 people to die, correct?

21 A. Well, at that point three people weren't
22 dead.

23 Q You're correct What caused the two
24 people and the many others who went to the hospital
25 sick, correct?

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1 A. My interpretation of what she was asking
2 me was what my role was there. Like I said, I
3 didn't feel like it was a complete interview or
4 complete statement and --

5 Q. Mrs Mercer, is there any reason --

6 MS. POLK: Judge, can the witness finish her
7 answer?

8 MS. DO: Sorry. I thought she was.

9 THE WITNESS: I don't know that she was -- like
10 I said, my impression was it was more just like a
11 first -- you know -- you were there. What
12 happened. It wasn't all the details. Because I
13 couldn't remember -- you know. Like I said, it was
14 in the moment. There was a lot of emotions. Things
15 were happening. And I no way considered that a
16 complete statement and assumed I would either be
17 being contacted by someone else or, like, in the
18 next day we talked to Detective Diskin.

19 Q. BY MS DO. Is there any reason why you
20 are, from what appears to me, kind of distancing
21 yourself from that earlier statement to
22 Detective Edgerton?

23 MS. POLK: Judge, object to the form of the
24 question.

25 THE COURT: Just a second. There is an

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1 objection. Overruled.

2 You may answer that.

3 THE WITNESS: I don't feel like I am.

4 Q BY MS DO: Okay

5 Your Honor --

6 A. I feel like I'm explaining. I feel like
7 you're trying to take what I said at the hospital as
8 the complete story, no more details. That's
9 everything she remembers. And I'm trying to say
10 that I didn't feel that was the intent of that
11 interview.

12 It was -- the fact. I didn't feel it was
13 my complete interview at that time. And that's the
14 point I'm trying to make. I'm not trying to say
15 I -- I didn't say that. And I don't remember
16 specifically the questions she asked me or how she
17 asked me them. If you're asking me that, I have to
18 say I don't know. I'm not trying to discount that
19 statement at all.

20 Q. Okay

21 Your Honor, pursuant to 104(a), at this
22 time I'd ask to -- the state's marked additional
23 exhibits So I'm going to ask to mark this
24 transcript of the October 8, 2009, interview of Ted
25 and Debbie Mercer by Detective Pam Edgerton as the

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1 next in order.

2 THE COURT: 122.

3 MS. DO: 122. And I'm going to provide the
4 Court and counsel with a copy.

5 May I approach?

6 THE COURT: Yes. Thank you.

7 MS. POLK: Your Honor?

8 THE COURT: Yes, Ms. Polk.

9 MS. POLK: She's playing a portion. It's not
10 clear where the -- why the witness is being
11 confronted with a prior statement. Has there been
12 an inconsistent statement? And if so, what is it?
13 It's not clear to me why we're suddenly playing an
14 audio in the courtroom.

15 THE COURT: I don't know that you're ready to
16 play that now without further background. Ms. Do,
17 what is your --

18 MS. DO: First of all -- I'm sorry, Your
19 Honor. The audio is approximately 23 minutes. It's
20 the full interview conducted of Detective Edgerton.
21 It was provided to the defense by the state. The
22 state has full knowledge of what's contained in the
23 statement.

24 I think once the Court hears the
25 statement, the Court is going to understand why it

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1 is highly relevant and it is a prior inconsistent
2 statement.

3 THE COURT: Ms. Polk, you're seeing this
4 transcript for the first time right now; correct?

5 MS. POLK: Judge, I am. And additionally,
6 there is not a prior inconsistent statement that
7 would justify playing the entire audio of an
8 interview. This witness has not denied that she
9 made the statement. She has not denied that any of
10 the statements contained in the audio and the
11 transcript -- she hasn't denied that she made them.
12 There is nothing inconsistent to allow Ms. Do to
13 proceed now to play for the Court an entire audio.

14 MS. DO: Your Honor, if I may state this: The
15 state has indicated to the defense for the first
16 time today that it is going to withdraw
17 Detective Diskin as a witness and that it intends to
18 put in his place approximately 21 witnesses for
19 which they will give the Court audio transcripts --
20 I'm sorry -- audiotapes and transcripts and ask the
21 Court to consider that.

22 I don't understand how the state can use
23 104(a) when it's convenient and not when we are
24 attempting to do the exact same thing. It either
25 applies or doesn't apply.

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1 Here we have a witness on the stand who
2 actually made the statement and can be confronted
3 and cross-examined about it. And I'm offering the
4 Court that this statement is not only inconsistent,
5 it's highly relevant to establishing credibility and
6 bias.

7 I'm not -- can't recall the exact Arizona
8 evidence rule, but I think that the rule states that
9 I can impeach the witness before or after giving her
10 an opportunity to deny the statement.

11 If the Court wants, I can take a look and
12 pull up the exact evidence rule. But I think we're
13 either going to not use 104(a) or we are.

14 THE COURT: It's Rule 613.

15 But, Ms. Polk, I want to ask. The
16 evidence -- Ms. Do has just indicated you intend to
17 offer a number of statements which would be
18 hearsay. But --

19 MS. POLK: Yes, Judge. And my objection to
20 this audio. I have no objection if the Court -- if
21 Ms. Do wants to move for the admission of the
22 transcripts and the audio. I have no objection to
23 their admission.

24 My admission is -- my objection is to the
25 improper impeachment of a witness. You only impeach

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1 a witness with a prior inconsistent statement if, in
2 fact, that statement is inconsistent with a
3 statement she's making from the stand. She has not
4 denied that she made the statements at the emergency
5 room on the early morning hours of October 9. She's
6 not denied that. There is nothing inconsistent to
7 confront her with.

8 She has explained why it is not a more
9 lengthy interview. She hasn't denied anything in
10 it. There is no reason to proceed with trying to,
11 quote, "impeach her with it."

12 So my objection is that it's improper
13 impeachment. I have no objection to admit it. If
14 the Court wants to hear it, there is nothing in it I
15 object to it except that we're about to listen to 24
16 minutes for no good purpose.

17 THE COURT: The actual recording has not been
18 marked, has it?

19 MS. DO: Your Honor, you're correct. May I
20 have that marked as the next, 123.

21 THE COURT: Yes. Transcript will be 122. The
22 CD, 123. And I'm going to admit those both.
23 (Exhibits 122 and 123 admitted.)

24 THE COURT: And I'll consider them. But I can
25 listen to those outside court just as I would the

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1 other evidence that's offered. Is there any reason
2 to have that played here right now?

3 MS. DO: I believe once it's admitted, it's
4 publishable. And I think it is very significant for
5 the defense to be able to then after having the
6 witness listen to this tape continuing questioning.

7 The rules specifically state that the
8 witness must be given an opportunity to admit or
9 deny the statement, answer additional questions.
10 The rule doesn't say that I have to do that before I
11 play the impeaching statement.

12 THE COURT: The rule says if you're going to
13 offer extrinsic evidence, the witness has to be
14 given an opportunity to explain first. And I think
15 there have been some inconsistencies. Just hasn't
16 been presented in the normal fashion. I would have
17 to go back through my notes and review that.

18 But I don't know why, Ms. Do, there
19 wouldn't be a question about what you believe the
20 evidence shows or in good faith you want to ask.
21 And that's what's needed for a cross-examination
22 question. And if there is an inconsistency, it can
23 be pointed out in the normal fashion of impeachment
24 rather than playing all of this at this time.

25 I will consider this. If it's

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1 inconsistent with other things, you can argue that
2 to me, and I can look at the testimony that's been
3 presented. But I don't see any need to play the
4 entire tape. It just seems -- I don't see that.

5 MS. DO: May we have a moment, Your Honor.

6 THE COURT: Yes, you may. I'll going to admit
7 both of these, and it will be considered, just as
8 other evidence.

9 MS. DO: Thank you, Your Honor. Let me try and
10 proceed in the manner the Court's outlined.

11 Q Mrs Mercer, when you spoke to
12 Detective Edgerton, do you remember
13 Detective Edgerton asking you the question of what
14 was different today than the previous two with James
15 Ray? Do you remember that?

16 A. I don't remember asking specifically, but
17 I remember searching my mind for an answer.

18 Q. And that question, what was different with
19 today than James Ray previous sweat lodges are
20 essentially questions that Ms Polk has also asked
21 you, correct? Similarities and differences among
22 the three James Ray sweat lodges you've been
23 involved in? Yes?

24 A. I forget the question.

25 Q That question of what was different or

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1 similar between James Ray's sweat lodge in 2009 to
2 the 2007 and 2008 -- that question has been posed to
3 you by the state, correct?

4 A. Yes.

5 Q Ms Polk has asked you that?

6 A. Yes.

7 MS. POLK: Your Honor, excuse me. Could I have
8 a reference to the location for that statement you
9 made?

10 MS. DO: Page 10, line 8.

11 Q And when Detective Edgerton asked you that
12 very same question, the first night you told anyone
13 about what you saw or heard, what you thought about
14 the sweat lodge on October 8, what was different
15 today than the previous two with James Ray? Do you
16 remember what you said?

17 A. No. I remember I was trying to think
18 about what was different. And at that time I was
19 thinking more, I think, about the construction, if
20 there was something different about the materials
21 used or the construction or things like that.

22 Q Mrs Mercer, you and Ted Mercer that night
23 answered that question And you told
24 Detective Edgerton the only thing that was different
25 with the 2009 sweat lodge was the wood that you and

119

1 Mr Mercer burned

2 A. That's what I was referring to. Yes.

3 Q. And that's what you told them?

4 A. That's what I considered her context of
5 the question to be. I mean, obviously it was
6 different because nobody had been burned before.
7 Nobody had said they're having a heart attack
8 before, and nobody had been pulled out unconscious
9 before.

10 So when she was asking what was different,
11 in my mind went to my function of it, which is --
12 you know -- the wood and putting the tarps on and --
13 you know -- was anything added to the fire. It was
14 more that kind of thing. I didn't think that that
15 was what -- that was in the scope my answer was
16 referring to.

17 Q. Well, let me read to you what you and
18 Mr. Mercer said in answer to that question and see
19 if it refreshes your memory. Okay?

20 MS. POLK: Your Honor, if the witness wants to
21 be refreshed, can she see the statement and see if
22 it refreshes her recollection.

23 THE COURT: She can. I think she's had an
24 opportunity to explain it. Yes. She may see the
25 statement at this point.

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1 Q. BY MS. DO I'm going to hand you
2 Exhibit 122, starting at page 10 I'm going to have
3 you read starting at line 8 to page 11 to line 13.
4 Okay? You have your glasses?

5 A. Uh-huh.

6 Q Let me know when you're ready.

7 A. Okay.

8 Q. The portions I had you read do accurately
9 reflect what you said to Detective Edgerton -- you
10 and your husband; correct?

11 A. Yes.

12 Q. And you said when she asked what was
13 different today than the previous two with James
14 Ray, your husband: I think it was the wood

15 Detective Edgerton: The wood that was
16 used to heat the rocks?

17 Ted Mercer. Usually we usually use tree
18 wood, right? And there has been a whole bunch wood
19 that they used to build the cabins with that was
20 left over for a long time. And you said that was
21 backed up.

22 Ted: And that's what he told us to use is
23 that wood and -- you know -- we burned that wood
24 before but along with other stuff. So -- you
25 know -- I know that -- I don't know

121

1 Debbie Mercer. That's the only thing
2 that -- and Ted finishes your sentence That's the
3 only thing that was different was the wood that we
4 used because it was this block wood And usually we
5 use tree wood

6 Detective Edgerton Is it -- but he
7 doesn't bring the wood with him, does he?

8 Ted No

9 Detective Edgerton So where is --

10 Ted Mercer It was on the property

11 Debbie Mercer There were some cabins
12 that weren't made

13 Ted Mercer: Yeah They had a whole --
14 they had a huge pile of wood there that had been
15 sitting there for years And when they stopped
16 construction, they just let it sit there So they
17 didn't know what else to do with it. So they've
18 been burning it.

19 Edgerton Okay But when James Ray
20 comes, does he usually say -- I mean, how does he
21 gather the wood that he's going to use?

22 Ted Mercer He doesn't Michael Hamilton
23 is the.

24 Edgerton So Angel Valley is in charge of
25 getting the wood for him for these things?

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1 Ted Mercer Yeah For getting the wood
2 Edgerton And this time Michael says
3 okay. He wants wood but -- you know -- we've got
4 all this wood Let's go ahead and use it Or did
5 James Ray say --

6 Ted Mercer No No It was Michael
7 Hamilton telling our friend Rotillo that works out
8 there to tell him to cut up this wood and place it
9 here He goes use this wood here because he as to
10 direct Rotillo. He doesn't speak good English and
11 everything so he -- you know -- he's got to direct
12 him to tell him what to do

13 Edgerton What's Michael's last name?

14 Ted Mercer: Hamilton.

15 That's what you told Detective Edgerton
16 when she asked you what was different about James
17 Ray's sweat lodge that could have caused the
18 injuries that occurred at that evening, correct?
19 **A. Yeah. And, as I said, my interpretation**
20 **of her question was the scope of the construction**
21 **and what was different. That was how I considered**
22 **her question.**

23 **Q** Well, do you want to look at the rest of
24 the transcript? Preceding that Detective Edgerton
25 was asking you what could have caused these people

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1 to become so sick and injured

2 **A. And I probably said I don't know.**

3 **Q.** What you said is I think it was the wood
4 is what we just read Is that correct?

5 **A. Yes.**

6 **Q.** And it was in this interview also that you
7 never mentioned that people were inside the sweat
8 lodge yelling out that folks were unconscious or
9 that James Ray said let them be; is that correct?

10 **A. That's correct. But, again, I ask you to**
11 **remember the context of this interview. I didn't**
12 **feel it was a official interview. It was after the**
13 **event. Emotions were high. And I would say I was**
14 **in a very emotional state.**

15 **Q.** Would that have affected your ability to
16 tell the truth?

17 **A. Not to tell the truth. But I don't think**
18 **I would have had as clear a head to answer**
19 **questions. I mean, I was very emotional.**

20 **Q** This is the reason why I wanted to play
21 the tape I think the demeanor of the witness is
22 important.

23 **THE COURT:** You may play a portion of it.

24 **MS. DO:** Thank you. I need to figure out how
25 to cue it up if we're not playing the whole tape.

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1 **THE COURT:** You can start it. Again, I'll
2 listen to the tape. I'll listen to the whole tape
3 myself.

4 **MS. DO:** Okay. If I can have a moment, I'll
5 cue it up so as to save the Court time.

6 **THE COURT:** Okay.

7 **MS. DO:** Thank you.

8 **For the record, I'm going to be playing**
9 **the tape from 11 minutes, 31 seconds.**

10 **THE COURT:** Where is the starting point?

11 **MS. DO:** It will be on the transcript, page 10,
12 line 8.

13 **THE COURT:** Thank you.

14 (Audio recording played)

15 **Q.** BY MS. DO: We just listened to the
16 demeanor and the exact statement that you gave to
17 Detective Edgerton; correct?

18 **A. Yes.**

19 **Q** You then had another conversation with
20 Detective Diskin on October 19; is that correct?

21 **A. Yes.**

22 **Q.** And in that October 19 conversation,
23 Detective Diskin told you explicitly that you would
24 not be criminally charged You were not the subject
25 of their investigation; correct? Do you remember

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1 that?

2 A I remember a conversation. Yes.

3 Q Detective Diskin told you that they
4 weren't going to be looking at you or your husband,
5 correct?

6 A I don't know if he said those exact words,
7 but I got the impression that --

8 Q That you were off the hook?

9 A No. I wouldn't consider me on a hook.

10 Q What did you think he meant when he said
11 to you that he didn't think you had anything to
12 worry about because you wouldn't be criminally
13 charged?

14 A Oh. Because I was wondering whether I
15 should get a lawyer.

16 Q And he told you that you should?

17 A He said it's advisable to talk to a
18 lawyer.

19 Q Thank you.

20 I have nothing further

21 THE COURT: Ms. Polk, redirect?

22 MS. POLK: Yes, Judge. Thank you.

23 REDIRECT EXAMINATION

24 BY MS. POLK:

25 Q Miss Mercer, just briefly You were -- a

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1 portion of the transcript or the audio from the
2 initial interview that occurred sometime late
3 October 8 or the early morning -- early morning
4 hours of October 9, 2009, was just played for you.

5 And you have tried to explain your
6 perception of what that interview was about. Would
7 you tell The Court what you understood when you were
8 in the hospital what that interview was about?

9 A In my opinion, it was more of fact
10 gathering, trying to find out what happened, why
11 everyone had -- why people had gotten hurt -- you
12 know -- what was different. In my -- the only thing
13 I could think of at the time was -- you know -- how
14 the sweat lodge was built. That was the only thing
15 I could think of.

16 Q And prior to being asked by
17 Detective Edgerton about what was different in the
18 sweat lodge, do you recall whether you told her
19 about what had actually happened at the sweat
20 lodge?

21 A No. She didn't ask specific questions
22 that I -- I don't recall her asking specific
23 questions about -- you know -- did you see this
24 or -- it was more trying to figure out the scene and
25 what had happened. It was an initial interview, I

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1 thought, of -- you know -- give me your story of
2 what you saw.

3 Q Was the only thing you talked to her about
4 the wood? Or did you also talk to her about what
5 happened when the sweat lodge ceremony was over and
6 how you pulled people out?

7 A Yes. I believe we talked about that.
8 Like I said, it was more of a -- I thought it was a
9 description of the scene that had happened.

10 Q And if you saw a transcript of that
11 interview, would that help you remember what was
12 asked and what was answered?

13 A Yes.

14 Q Your Honor, I'd like to show the witness
15 Exhibit 122, which is the transcript of that audio
16 recording that was just played in court.

17 THE COURT: Okay.

18 Q BY MS. POLK: Let me just have you take a
19 few moments. Read through starting at the bottom of
20 page 8, and then read up -- just read up through
21 pages to help you refresh your memory about what you
22 talked about with Detective Edgerton.

23 A Okay. To the bottom of 15, you said?

24 Q Miss Mercer, before coming to court today,
25 had you ever seen a transcript of the interview

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1 conducted by Detective Edgerton that night?

2 A No.

3 Q And had you had a chance to listen to the
4 audio of it?

5 A No.

6 Q Now that you've had a chance to look at
7 the transcript, does that refresh your recollection
8 as to whether or not you talked about more than just
9 the wood when you were interviewed at the hospital
10 that night?

11 A Yes.

12 Q And specifically did you tell
13 Detective Edgerton about the intense heat in the
14 sweat lodge ceremonies performed by James Ray?

15 A Yes.

16 Q And what did you tell Detective Edgerton?

17 A I told -- it's an extreme, extreme sweat
18 lodge.

19 Q Did you use the word "cook"?

20 A Yes.

21 Q And what did you say?

22 A That James Ray cooks the people, meaning
23 the heat -- that it's really, really hot, hotter
24 than any other sweat lodge ever -- I mean, hotter
25 than any traditional sweat lodge.

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1 Q And did you also talk to
2 Detective Edgerton that night about past events and
3 people passing out, eyes rolling back in their
4 head?

5 A Briefly.

6 Q And do you recall -- will you tell the
7 Court what you -- or maybe you can find it on the
8 transcript where you talked about that. I'd refer
9 you to page 12

10 A Okay. Yeah. When someone is coming out
11 and their eyes are rolling back in their head, you
12 grab them and pull them out. But they -- then they
13 always have their Dream Team then. They are his
14 people to take care of his people. So it's --

15 And Edgerton: Have anything -- like have
16 people had to be transported before?

17 No.

18 Ted: No. Never had to be transported.

19 Debbie: I think they should have been.

20 Ted: I think they should have been.

21 Debbie: Last year like when Caroline
22 inaudible.

23 Ted Mercer: Convulsions. Oh, she was
24 bad. But they --

25 Debbie Mercer: Shock. And then --

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1 Ted Mercer: But there was someone to take
2 care of her. But then there was two other women
3 that couldn't tell me what their names were after it
4 was done until the next day -- you know -- so
5 they --

6 Edgerton. Okay.

7 Debbie: It's an extreme, extreme sweat
8 lodge.

9 Edgerton: All right.

10 Keep going.

11 Q No. That's good And, Miss Mercer, you
12 were asked a question by the defense attorney
13 suggesting that Detective Edgerton had specifically
14 asked you what caused people to die. Would you
15 agree that that question was never asked of you in
16 the interview that night in the emergency room?

17 A No. I think I was asking that question
18 why did they die. Because we were trying to figure
19 it out.

20 Q But you would agree that you were not
21 asked by Detective Edgerton to explain why people
22 died?

23 A At that point they hadn't died. I think
24 one was pronounced at the scene. But I don't recall
25 that.

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1 Q The questions from Detective Edgerton
2 centered more specifically on the construction of
3 the sweat lodge. Would you agree with that?

4 A Yes.

5 Q And then it was the next day, October 9th,
6 that Detective Diskin was out at Angel Valley?

7 A Yes. And I apologize. Earlier I said I
8 found him. And I think my husband initially talked
9 to him. Because he was on his morning walk and he
10 ran into him and then said that's who we were going
11 to talk to.

12 Q I'm going to hand you -- well, you
13 testified under cross-examination that you agreed
14 that on the evening of October 8 -- or perhaps it
15 was the early morning hours of October 9. But at
16 the interview at the hospital you didn't
17 specifically use the word "unconscious" referring to
18 past sweat lodges Do you recall that line of
19 questioning on your cross-examination?

20 A You confused me.

21 Q I'm sorry. You were confronted by Ms. Do
22 with why you didn't use the word "unconscious" when
23 you were interviewed the first time with
24 Detective Edgerton. Do you recall that?

25 A Yes.

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1 MS. DO: I object. That misstates both the
2 question and the testimony, Your Honor.

3 THE COURT: I'm sorry, Ms. Do?

4 MS. DO: I'm sorry. I object. I believe that
5 both misstates the question I asked and the
6 testimony.

7 THE COURT: Okay. What's your recollection of
8 your question?

9 MS. DO: My question to Mrs. Mercer was is it
10 true that on October 8, 2009, when you spoke to
11 Detective Pam Edgerton, you never told her that
12 people inside the sweat lodge were saying folks were
13 unconscious?

14 I think Ms. Polk just rephrased the
15 question very differently. And the question I heard
16 was when Ms. Do asked you about you using the word
17 "unconscious." To me it has very different import.

18 THE COURT: Ms. Polk used the word "confronted"
19 also.

20 Ms. Polk, was that question close enough?

21 MS. POLK: It's close enough, Your Honor.

22 THE COURT: If you can paraphrase and ask
23 Miss Mercer that, she can answer that question.

24 Q BY MS. POLK: Do you recall today whether
25 during that first interview with Detective Edgerton

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1 you discussed with the detective whether or not
2 people were unconscious in prior sweat lodges?
3 A. I don't recall. I don't -- she didn't --
4 I don't. She didn't -- I don't remember her asking
5 specifically asking about previous sweat lodges. I
6 remember in our explanation -- you know -- telling
7 her that about other sweat lodges.
8 Q. And do you recall, as you sit here today,
9 whether in that first interview you told
10 Detective Edgerton that Mr. Ray knew that people
11 were unconscious in the 2009 sweat lodge ceremony?
12 A. You're asking me if I remember if I told
13 that to the detective? No. I don't remember that.
14 Q. Yes. Do you recall whether you told that
15 to Detective Diskin when he interviewed you on
16 October 9?
17 A. If I told him I knew there was people
18 unconscious in '08?
19 Q. No. I'm sorry. Do you recall when
20 Detective Diskin interviewed you on October 9,
21 recall whether you told him that in the sweat lodge
22 ceremony in 2009 that people were unconscious and
23 that Mr. Ray knew that?
24 A. I think I told them that -- yeah. The
25 next day. Yeah. Yes.

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1 Q. And what do you recall telling
2 Detective Diskin the very next day?
3 A. I remember saying that James -- that
4 people had told James that someone was unconscious
5 or that two people were unconscious and that James
6 said to wait until the next round.
7 Q. You were asked some questions about in
8 2007 and 2008 whether this was normal for a sweat
9 lodge. And your response was it was perhaps normal
10 for a James Ray sweat lodge ceremony. Do you recall
11 that?
12 A. Yes. I read it in the transcript.
13 Q. Was it normal -- was the medical distress
14 or the physical distress seen by participants in
15 2007, 2008 and 2009 normal for the other sweat lodge
16 ceremonies that you had assisted that were not
17 conducted by James Ray?
18 A. I would say other than the guy being hurt
19 and the guy saying he's having a heart attack. But
20 I guess I wasn't thinking about those at the time.
21 Q. And then you were asked questions about
22 why you didn't call 911 in 2007 and 2008. And let
23 me ask you this. In 2009 you did call 911, is that
24 correct?
25 A. Yes.

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1 Q. Did you ask permission from somebody
2 first?
3 A. No. I asked James Ray for a phone.
4 Q. And why --
5 A. I told Amayra to call, and she walked the
6 other way.
7 Q. And can you explain why in 2009 you felt
8 you could call 911 and in 2008 and 2007 you did
9 not?
10 A. In 2009 people were blue. I don't need --
11 it was obvious that medical attention was needed.
12 Q. Okay. And then finally I just want to
13 show you a couple of exhibits. I'm going to put up
14 on the overhead Exhibit 73, which has already been
15 admitted. I'm going to put up Exhibit 74, which has
16 already been admitted.
17 Do you see this lady curled up?
18 A. Yes.
19 Q. Do you have any recollection today of what
20 her condition was?
21 A. She was very, very bad. I don't know if
22 that's the one that was in -- she was in bad shape.
23 I don't think she was coherent. I can't remember
24 exactly. I remember her, though. I'm really bad
25 with faces and people. So I couldn't tell you if

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1 that was someone in particular or not.
2 Q. And, Miss Mercer, will you tell the Court
3 why you -- why the photographs are taken about a
4 half hour later instead of immediately?
5 A. Because usually I was tending to getting
6 people towels or water or still -- you know -- doing
7 things with the sweat lodge. After the lodge James
8 Ray in the past had had people take what was left of
9 their medicine bags and throw them into the fire.
10 And I was always concerned with people in that state
11 getting near the fire. So I would either be around
12 the fire or be helping people until it was obvious
13 it was time that people were getting their things
14 together and getting settled and going on their
15 separate ways.
16 Q. So by the time you took photographs, you
17 had already rendered the assistance you could to the
18 participants?
19 A. I would -- I mean, we still obviously
20 helped them get to their rooms and helped them if
21 they needed further assistance. But I think -- I
22 mean, I know the pictures were taken a time later.
23 I'm not saying after I took the pictures I walked
24 away and didn't do anything. I went back and
25 continued to work.

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1 Q Okay.
2 A I just stopped for a moment to take
3 pictures for my friend.
4 Q I understand I'm going to put on the
5 overhead Exhibit 76 and ask you if you recall this
6 group that's in the background And there is a man
7 with a hat bent over
8 A I can't see very well. But, again, I'm
9 really bad with people and faces. I can't make that
10 out.
11 Q You see where I just made a mark?
12 A Yes.
13 Q Do you recall what was going on over in
14 that corner?
15 A No.
16 Q Let me put up on the overhead Exhibit 55.
17 Would you agree with me that that appears to be the
18 same man that was in the previous exhibit?
19 A I couldn't be certain. I can't tell.
20 Q Let me approach you and let you look at
21 the live photos I'm going to hand you the two
22 exhibits I just referred to
23 A Oh, yeah. Yes. Yes.
24 Q And then I'm going to put Exhibit 49 back
25 up on the overhead and ask you to explain to the

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1 Court what you just recognized
2 A I recognize the fellow in this photo to be
3 the same fellow in the previous photo.
4 Q And do you have any recollection today
5 what he was doing with the feet of somebody there?
6 A No. No, I don't.
7 MS. POLK: Thank you, Miss Mercer.
8 Thank you, Judge.
9 THE COURT: Thank you, Counsel.
10 Miss Mercer, I have a question. It's
11 really more in terms of clarification. When I ask a
12 question, the lawyers can object to that. Of
13 course, they can follow up. I don't know that I
14 understood an answer to a question that Ms. Polk
15 asked.
16 THE WITNESS: Okay.
17 THE COURT: So counsel can listen. If I happen
18 to have missed the question Ms. Polk asked. She was
19 asking you -- well, you had indicated before you had
20 seen other sweat lodge ceremonies, others that did
21 not involve Mr. Ray. Is that true?
22 THE WITNESS: Yes.
23 THE COURT: You said that. I think Ms. Polk
24 was asking you to compare what you observed, what
25 you testified to, about seeing physical distress and

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1 what you might or might not have seen after other
2 sweat lodge ceremonies that did not involve
3 Mr. Ray. What was your answer to that question?
4 Did you see a difference with regard --
5 THE WITNESS: There was never anyone injured in
6 any other sweat lodge, traditional sweat lodge,
7 other than James Ray's sweat lodge. To my
8 knowledge, there has never been an injury or people
9 coming out in distress, looking the way they did
10 from James Ray's lodge.
11 THE COURT: I was really trying to restate a
12 question that Ms. Polk asked. I'm going to ask for
13 the lawyers to follow up if they wish.
14 Ms. Polk?
15 MS. POLK: No, Your Honor.
16 THE COURT: Ms. Do?
17 MS. DO: No, Your Honor. Thank you.
18 THE COURT: Thank you.
19 May Miss Mercer be excused?
20 MS. POLK: Yes, Your Honor.
21 THE COURT: Counsel, we'll go ahead and recess
22 at this time and resume at 1:30. And I'll ask
23 Ms. Polk or anybody to advise people regarding the
24 rule of exclusion, ask the attorneys to make sure
25 everyone understands that.

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1 (Recess.)
2 THE COURT: Back on the record in State versus
3 James Arthur Ray. He has waived his appearance at
4 this hearing. The attorneys are all present.
5 Ms. Polk, you may continue.
6 MS. POLK: Thank you, Your Honor. The state
7 calls Vicky Rock, please.
8 THE COURT: Ma'am, please step to the front of
9 the courtroom here. And if you'd raise you're right
10 hand and be sworn by the clerk here to my left.
11 VICTORIA ROCK,
12 having been first duly sworn upon her oath to tell
13 the truth, the whole truth, and nothing but the
14 truth, testified as follows:
15 THE COURT: Please be seated here at the
16 witness stand. Please start, ma'am, by stating and
17 spelling your full name.
18 THE WITNESS: My name is Victoria Rock;
19 V-i-c-t-o-r-i-a, R-o-c-k.
20 THE COURT: Thank you.
21 Ms. Polk?
22 DIRECT EXAMINATION
23 BY MS. POLK:
24 Q Good afternoon, Miss Rock. In 2008 were
25 you residing in the Verde Valley area?

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1 A. No, ma'am.
 2 Q Where were you residing?
 3 A. Shanai, Illinois.
 4 Q Are you now residing in the Verde Valley
 5 area?
 6 A. I am.
 7 Q. When did you come back?
 8 A. August of this year.
 9 Q And in 2008 did you participate in a
 10 seminar put on by James Ray called the "Spiritual
 11 Warrior Seminar"?
 12 A. Yes, I did.
 13 Q Do you recall the approximate dates of
 14 that seminar?
 15 A. September 13th to the 18th? Was a Sunday
 16 through -- we left on Friday morning.
 17 Q Had you participated previously in other
 18 James Ray events?
 19 A. One event.
 20 Q And what event was that?
 21 A. Harmonic Wealth.
 22 Q Do you recall approximately when that was?
 23 A. The year before.
 24 Q In September 13, the week of September 13
 25 of 2008, then, where was the event held that you

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1 participated in?
 2 A. The Spiritual Warrior?
 3 Q Yes
 4 A. In Angel Valley in Sedona.
 5 Q Was that your first time at the Angel
 6 Valley center?
 7 A. Yes, ma'am.
 8 Q Did you participate in all of the events
 9 that week that were part of the Spiritual Warrior?
 10 A. Yes, I did.
 11 Q Did you participate in something called
 12 the "Vision Quest"?
 13 A. Yes, I did.
 14 Q. Can you explain to the Court what the
 15 Vision Quest was.
 16 A. The Vision Quest was we were sent out in
 17 the desert alone for 36 hours to journal and just be
 18 in silence.
 19 Q How many days or nights was it?
 20 A. It was two nights. We went out late, and
 21 then we came back in a day and a half later in the
 22 morning.
 23 Q During the time, during the 36 hours that
 24 you were out in the desert, did you have any food or
 25 water?

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1 A. No, ma'am.
 2 MR. KELLY: Your Honor?
 3 THE COURT: Yes, Mr. Kelly.
 4 MR. KELLY: Judge, I object on the basis of
 5 relevance. I'm curious as to how this relates to
 6 any prior specific act which the state is urging
 7 admissibility under 404(b) that this lady
 8 participated in other activities. Up to this point
 9 in this hearing we've been discussing the sweat
 10 lodge and the activities within the sweat lodge.
 11 And secondly, Judge, I appreciate your
 12 focus this morning in regards to the 2005 event.
 13 And I'd ask the prosecutor to focus as to what the
 14 specific act is that's proposed its-- admissibility
 15 is proposed in 2008. Is it the entire event? Is it
 16 the lady coming out the door who passed out?
 17 THE COURT: Ms. Polk, first with regard to the
 18 objection, there have been some questions about the
 19 Vision Quest. There has been some testimony about
 20 that. But, again, in the 404(b) context pretty
 21 confined area, the relevance. I would like you to
 22 address that.
 23 MS. POLK: Judge, you're correct. There has
 24 been some testimony about the Vision Quest, and in
 25 2005 the order of events and the amount of time

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1 between the Vision Quest and the sweat lodge. And
 2 its relevance is simply that before, as on other
 3 occasions in 2009, as on previous occasions, before
 4 these participants go into the sweat lodge, they
 5 have participated in a Vision Quest that was 36
 6 hours out in the desert without food or water.
 7 Again, it's the similarities between the
 8 prior events and the 2009 event.
 9 THE COURT: And then as to -- as opposed to a
 10 particular person in 2005, the other part that
 11 counsel is inquiring about is the specific act that
 12 you would be discussing with this witness that would
 13 relate to the 2009 sweat lodge event. I think you
 14 stated before. You're talking about the whole
 15 manner in which it was conducted.
 16 MS. POLK: Yes. And, Judge, with respect to
 17 the prior sweat lodges as well, we are moving to
 18 admit testimony about the entire sweat lodge
 19 ceremony as well as the sequence of events leading
 20 up to those sweat lodge ceremonies.
 21 In discussing specific things that
 22 happened during the sweat lodge ceremony, I'm
 23 drawing out the remarkable similarity between the
 24 2005, the '07, the '08 sweat lodge ceremonies to
 25 what happens in 2009.

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1 But what is relevant under 404(b) is
 2 everything about the 2005 and subsequent sweat
 3 lodges as well as the fact that there is the Vision
 4 Quest that precedes the sweat lodge that is part of
 5 the explanation for why participants become in such
 6 physical distress because they've been deprived food
 7 and water the 36 hours preceding the sweat lodge.

8 THE COURT: Mr. Kelly?

9 MR. KELLY: Judge, would we not have to hear
 10 from each and every participant, 2005 through 2008
 11 in order for this court to make a decision whether
 12 there is clear and convincing evidence that somehow
 13 one of the exceptions to 404(b) has been
 14 established?

15 That's my concern, that we have now taken
 16 this event -- and you have seen evidence such as the
 17 exhibits in the 70 range that show numerous
 18 participants who are happy and excited. And one is
 19 even dancing in the background.

20 And what we've done is taken one witness
 21 who said she didn't have any water during the Vision
 22 Quest. Judge, I believe I've had a chance to
 23 articulate my objection. I'm sure I'll discuss it
 24 further.

25 THE COURT: I pointed to the various cases, and

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1 the attorneys have cited them. The state's ability
 2 to show similarity and circumstances is
 3 significant.

4 Mr. Kelly?

5 MR. KELLY: In that regard, Mr. Li just
 6 reminded me of something extremely important. And
 7 that is one of the victims in the indicted case --
 8 Liz Neuman -- did not participate in the Vision
 9 Quest.

10 THE COURT: Then -- thank you. Those various
 11 details could be significant. With regard to this
 12 witness and the testimony right now, again, the
 13 similarity is a relevant factor. And I'm going to
 14 allow the testimony. And I have -- well, Mr. Kelly,
 15 I believe you may have further argument at some
 16 point about burden of proof. But that can be
 17 addressed in argument. Or if you have testimony on
 18 behalf of the defendant.

19 MR. KELLY: Judge, I feel compelled to put this
 20 on the record. The significant disadvantage for
 21 this defense team is that we're not able to prepare
 22 for this hearing because we do not know the specific
 23 act alleged. It's simply, as Ms. Polk just
 24 articulated, everything from 2005 to 2008.

25 Obviously, as you have explained this

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1 morning, that cannot be possible under 404(b). This
 2 is not a five-year continuing crime. And so it's
 3 difficult to know prior to this woman's testimony
 4 that I was suppose to prepare some testimony or --
 5 excuse me -- cross-examination relating to Vision
 6 Quest.

7 I'm not alone in that disability. Each of
 8 the attorneys for each witness has been confronted
 9 with the same problem. The lack under Rule 15 of
 10 the identification of the specific act and the
 11 specific exception to that act to allow us to
 12 prepare for this hearing.

13 THE COURT: I'm going to allow this testimony.

14 Ms. Polk, is there anything else you
 15 wanted to address?

16 MS. POLK: No. Just, Judge, that I did file in
 17 August a memorandum detailing the events that we
 18 would be going into at this hearing.

19 THE COURT: I was just retrieving that. I did
 20 look these documents over last night. And there is
 21 some description in the response that was filed.
 22 It's in early August.

23 MS. POLK: Yes.

24 THE COURT: I'm going to overrule the objection
 25 at this time.

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1 You may continue, Ms. Polk.

2 MS. POLK: Thank you, Judge.

3 Q. Miss Rock, you mentioned that on the
 4 Vision Quest the participants had no food or water?

5 A. Correct.

6 Q. Approximately what time of day did that
 7 Vision Quest end in 2008?

8 A. It end?

9 Q. Yes. The Vision Quest portion.

10 A. In the morning like -- it was early. I'd
 11 say somewhere around 7:00.

12 Q. And how did it end? How did you know it
 13 was over?

14 A. The Dream Team came and got us from the
 15 spots that we were at.

16 Q. You used the term "Dream Team " Will you
 17 explain to the Court what that is

18 A. The Dream Team is people who volunteer
 19 their time to help out at James Ray's events to
 20 assist him in things that need to get done.

21 Q. After the Dream Team retrieved you from
 22 your spot, what happened next as part of the
 23 seminar?

24 A. We were then told to go to breakfast. At
 25 that time we were still in silence. And shower or

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1 get ready for the day. And then we met back in the
2 Crystal Hall, which was a meeting room.
3 Q When did you get some food or water?
4 A When we came in from the Vision Quest,
5 around 7:00 in the morning.
6 Q Okay Did you partake of food and water
7 and then go shower, if you recall?
8 A I don't recall.
9 Q After getting some food and water and
10 showering, then you assembled in the Crystal Hall?
11 A Correct.
12 Q What happened in the Crystal Hall?
13 A We had a meeting, and silence was then
14 lifted. We were able to talk about our experience
15 on our Vision Quest. James holds an open frame
16 where we could ask questions or that type of thing.
17 Then shortly thereafter it was time for lunch. We
18 were told to eat lightly and to hydrate, that he had
19 a big surprise.
20 Q After you ate lunch where did you go?
21 A Back to the Crystal Hall, I believe.
22 Q And what happened then at the Crystal
23 Hall?
24 A Well, then we were told about the next
25 event, which was going to be the sweat lodge.

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1 Q Did you not know prior to being told about
2 the big surprise that you were going to have a sweat
3 lodge?
4 A I did not. I did not.
5 Q And how did you prepare for the sweat
6 lodge?
7 A We were told to change our clothing into
8 something that could get wet and dirty. A lot of
9 people wore bathing suits or whatever.
10 Q So you came back to the Crystal Hall. You
11 were told about the sweat lodge at that time?
12 A Right.
13 Q And then were you told to go change again?
14 A We were told to go change and meet down by
15 the sweat lodge.
16 Q At some point did James Ray tell about
17 what to expect in the sweat lodge?
18 A That it was going to be hot.
19 Q Let me ask you first When was it he told
20 you what to expect?
21 A Prior to telling us to go change our
22 clothes and prepare for it.
23 Q So you're still in the Crystal Hall?
24 A Uh-huh.
25 Q And he announces the big surprise, which

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1 is a sweat lodge?
2 A The sweat lodge.
3 Q And then what did he say?
4 A That it was going to be very hot, that you
5 would think that you're going to die but you won't.
6 He bragged about how the Indian comes down to see
7 the crazy white man do his sweat lodge.
8 Q What did he mean by that? Or did he
9 explain what he meant by that?
10 MR. KELLY: Your Honor, as the question is
11 rephrased -- withdraw.
12 THE WITNESS: Pardon me?
13 Q BY MS POLK: Did Mr. Ray explain what he
14 meant by saying that the crazy white man and his
15 sweat lodge?
16 A Yeah. That they've never seen anyone do
17 it so hot.
18 Q Do you recall anything else Mr. Ray said
19 to you at that time about what to expect from the
20 sweat lodge?
21 A What I do recall is to seek out Sheryl.
22 Sheryl Stern was a James Ray employee. If we needed
23 to get out, she would get us out safely.
24 Q Is there any discussion about pushing
25 limits?

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1 A Well, that we were more than that. And
2 that's what I refer to is that you will feel like
3 you want to die but you won't. We were more than
4 that.
5 Q About how long would you say the meeting
6 was with Mr. Ray where he told you what to expect in
7 the sweat lodge?
8 A I don't recall as far as -- you know --
9 how long that meeting was.
10 Q The comments you have just shared with the
11 Court -- does that about cover what you were told
12 before going in the sweat lodge?
13 A Yes.
14 Q You told us you then gathered down at the
15 sweat lodge site itself?
16 A Uh-huh.
17 Q And what happened down there?
18 A We burnt our journals that we had been
19 working on all week. It was a lot of writing
20 exercises. And part of that was, like, letting go
21 of the old is what that signified. So we burnt
22 those. And then we lined up to go into the sweat
23 lodge.
24 Q Were you given instructions about how to
25 enter or exit the sweat lodge?

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1 A. We were to enter clockwise. I was in the
2 second row in. So the first row went around. And
3 then the second row went in. And I was in the --
4 closest to the fire pit, if you will, the second row
5 in.

6 Q Were you given any instructions about how
7 long the sweat lodge would last?

8 A. No, ma'am.

9 Q Were you told anything about what to do if
10 you wanted to get out?

11 A. Well, seek out Sheryl Stern. And you
12 could only get out when the gates or the door was
13 open.

14 Q Who was Sheryl Stern?

15 A. An employee of James Ray.

16 Q And was she inside the sweat lodge with
17 you?

18 A. Yes, she was.

19 Q Do you recall approximately what time it
20 was then, that, you entered the sweat lodge in
21 2008?

22 A. Mid afternoon. I don't really know.
23 Somewhere around maybe 2:00 o'clock.

24 Q How did you feel, Mrs. Rock, after hearing
25 that you were going into a sweat lodge and the

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1 comments that Mr. Ray made about what to expect?

2 A. Nervous.

3 Q. And how come?

4 A. I don't deal well with heat personally.
5 So I had a little anxiety about that and being in a
6 dark and close space.

7 Q But you did, in fact, go on in the sweat
8 lodge?

9 A. I did.

10 Q And just describe for the Court generally
11 how the ceremony began and what happened once you
12 were inside the sweat lodge

13 A. Once we were all seated in the sweat
14 lodge, the grandfathers were brought in. The
15 grandfathers are the hot stones on a pitchfork
16 thrown into the pit. The door was closed, and the
17 water was thrown, then, on the hot rocks.
18 Therefore, it was an instant sauna, steam, hot.

19 Q And what happened next?

20 A. There was some chanting. And James
21 explained about the different directions, what the
22 south meant and the north meant and the east and the
23 west. There was some chanting and -- that's what I
24 remember.

25 Q About how long did that first round last?

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1 A. I believe, like, 20 minutes.

2 Q Did you stay in for the 20 minutes?

3 A. No, ma'am. I got out.

4 Q When was it that you got out?

5 A. After the first round.

6 Q. How did you get out?

7 A. Sheryl Stern was about three or four
8 people to my left. And I got her attention when the
9 gate went up, and I crawled out.

10 Q And why did you leave?

11 A. Because the heat was so intense, my head
12 was pounding and, for lack of a better description,
13 my heart was pounding out my rear end as I sat there
14 on the sand.

15 Q. How did you get out? Did you walk?

16 A. I crawled. Because it's rather low. I
17 kind of -- you know -- squatted down and kind of
18 crawled out.

19 Q. What did you do once you got outside?

20 A. I went and got some water and laid
21 underneath the tent. There was a tent, makeshift.

22 Q. When you got outside, did anybody tend to
23 you?

24 A. There was a few Dream Team members out
25 there that did offer me assistance.

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1 Q. Did you feel bad about leaving after the
2 first round?

3 A. No.

4 Q. And did you ever go back in?

5 A. No.

6 Q. What did you do after the first round,
7 then? Once the second round started, were you
8 still --

9 A. I still sat outside.

10 Q And what did you do?

11 A. I just laid on a towel and by that tent.
12 Because my head was pounding. I had taken my
13 contacts out prior to going into the sweat lodge.
14 And so my vision was off and my head was pounding.
15 So I laid with my eyes closed on the towel
16 underneath the tent to keep the sun out of my face.

17 Q Did you stay at the site of the sweat
18 lodge for the entire sweat lodge ceremony?

19 A. I did.

20 Q. Were you there when the sweat lodge
21 ceremony ended?

22 A. Yes, I was.

23 Q. After you exited after round one, did you
24 become aware of other people coming out at any
25 point?

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1 A. If I understand you correctly, after round
2 one did anyone beside myself come out?
3 Q. Yes.
4 A. No.
5 Q. How about after round -- subsequent
6 rounds -- rounds two, three, et cetera?
7 A. I believe one person came out on two. On
8 round three I believe Sheryl Stern herself came out
9 and a few other people.
10 Q. And what was happening to people as they
11 came out, as you recall?
12 A. They were just hot, disoriented.
13 Q. How would they be taken care of by the
14 Dream Team?
15 A. They would offer them water, give them
16 towels, sit there and talk to them.
17 Q. At some point did you become aware of a
18 man yelling about his girlfriend?
19 A. Yes.
20 Q. When was that, if you recall?
21 A. That was around round five or six.
22 Q. Do you recall the name today of the man
23 you're thinking of right now?
24 A. John.
25 Q. Describe for the Court what he was doing

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1 or what his condition was
2 A. He was obviously in an altered state,
3 screaming that you're going to die. Get out of
4 there. Get out of there. You're going to die. And
5 he was physically trying to get to the sweat lodge
6 gate to go in there. He was held back by Dream Team
7 members.
8 Q. So prior to that did you notice when he
9 came out of the sweat lodge? When did you first
10 become aware of him?
11 A. When he started screaming. Yeah.
12 Q. And then what happened when he was
13 screaming and trying to get back into the sweat
14 lodge?
15 A. The Dream Team people sat there and held
16 him back and tried to talk to him. That she was
17 okay. She was okay.
18 Q. Did you also become aware at some point of
19 someone named Irwin?
20 A. Irwin Basma.
21 Q. Irwin Basma. And is that a male or
22 female?
23 A. Male.
24 Q. What drew your attention to Irwin Basma?
25 A. He was, like, convulsing, shaking

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1 violently like that. He was in distress. And again
2 the Dream Team people were over there taking care of
3 him.
4 Q. Do you recall what round it was that you
5 became aware of Irwin Basma?
6 A. I believe Irwin was prior to John. Maybe
7 fourth or fifth round.
8 Q. Any other specific individuals that you
9 can recall to today, becoming aware that they were
10 in some form of distress?
11 A. Barb Waters, who was my roommate. They
12 had to physically drag her out at the end. And this
13 was a while later that she came back to the
14 residence on a golf cart with two Dream Team
15 members, who then asked me to take care of Barb
16 because they had the closing ceremony.
17 Q. Okay. Let me back you up a little bit. A
18 woman named Barbara Waters was your roommate?
19 A. She was in the house that I was staying
20 in. Right. Yes.
21 Q. And she also went into the sweat lodge
22 ceremony?
23 A. Yes.
24 Q. Were you aware of Barbara Walters --
25 Barbara Waters while you were outside the sweat

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1 lodge after you had existed? When did you first
2 become aware that Barbara Waters was in distress?
3 A. When she was physically dragged out of the
4 sweat lodge.
5 Q. And when was that?
6 A. At the end after -- I believe it was seven
7 rounds.
8 Q. So let's talk about the end of the sweat
9 lodge ceremony. You were there?
10 A. Yes.
11 Q. Do you recall who came out of the sweat
12 lodge first?
13 A. I don't.
14 Q. Do you recall that --
15 A. Well, at the end James Ray came out first.
16 Q. And do you recall, then, who followed him
17 out?
18 A. I don't remember exactly.
19 Q. Do you recall about how many people came
20 out after him?
21 A. A lot.
22 Q. And how would you describe the general
23 scene at that point?
24 A. Chaotic, people in all different sorts of
25 altered states laying everywhere.

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1 Q. When did you become aware that your
2 roommate, Barbara Waters, was being dragged out of
3 the sweat lodge?

4 A. I guess standing there and just witnessing
5 her come out.

6 Q. Do you recall who dragged her out?

7 A. I don't.

8 Q. And then once she was brought out of the
9 sweat lodge, where was she taken?

10 A. She just was laying there on the ground.

11 Q. Describe for the Court her condition, as
12 you recall it

13 A. Like, as if she was sleeping. She was
14 passed out.

15 Q. Were her eyes open or closed?

16 A. Closed.

17 Q. Do you recall what Barbara Waters was
18 wearing that day?

19 A. I know she was wearing a two-piece bathing
20 suit. It was bright in color. But exactly what
21 color I don't recall.

22 Q. Have you had contact with Barbara Waters
23 since 2008?

24 A. I did see her at another event after
25 that.

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1 Q. And I'm going to put up on this overhead
2 what's been marked as Exhibit 67

3 A. Okay.

4 Q. And ask you if you are able to identify
5 Barbara Waters in that photograph

6 A. The lady laying on the ground.

7 Q. In what color bathing suit?

8 A. I guess it's red.

9 Q. And you can actually point to your screen
10 and draw a mark where you see her

11 A. Right here.

12 Q. How long was Barbara Waters laying on the
13 ground?

14 A. That I don't know because I didn't stay
15 there the whole time until she came back to the
16 room.

17 Q. What did you do?

18 A. I went back to the room.

19 Q. Was there -- at some point are
20 participants released to go back to your rooms when
21 the sweat lodge ceremony is over?

22 A. You could leave at any time. After you
23 come out and it's over to go get cleaned up for
24 dinner. Yeah.

25 Q. You left after the first round, yet you

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1 stayed on the site until the entire ceremony was
2 over?

3 A. Yes.

4 Q. Why was that?

5 A. Well, my husband was still in there.

6 Q. Who is your husband?

7 A. Mark Rock.

8 Q. He was inside the sweat lodge?

9 A. Yes, ma'am.

10 Q. Do you recall seeing Barbara Waters laying
11 there on the ground, though, before you left the
12 scene?

13 A. Yes.

14 Q. Do you know today as you testify here in
15 court where James Ray was at the time that Barbara
16 Waters was laying there on the ground?

17 A. My recollection, shortly after the sweat
18 lodge ended, everyone came out. James Ray had some
19 water and put his T-shirt back on and got in his
20 golf cart and left.

21 Q. Do you recall if Barbara Waters was out of
22 the sweat lodge when James Ray left?

23 A. I'm not sure.

24 Q. She could have been out of the sweat lodge
25 or she could still have been in?

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1 A. True.

2 Q. You don't know either way?

3 A. I don't know.

4 Q. You said you left then and went back to
5 your room?

6 A. Uh-huh.

7 Q. And what was that for? Why did you go
8 back to your room?

9 A. To get cleaned up, shower for dinner.

10 Q. And did you do that?

11 A. I did.

12 Q. And did you go to dinner?

13 A. I did not.

14 Q. Why not?

15 A. Because I didn't feel well.

16 Q. And then what did you choose to do then?

17 A. I put my contacts back in my eyes. I took
18 an Imitrex, which is a prescription medication for
19 migraine headaches, and laid down.

20 Q. How long did you lay down for?

21 A. Half hour maybe.

22 Q. And then what happened?

23 A. Then there was all kinds of chaos outside
24 the window, which was Barbara coming on the golf
25 cart.

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1 Q How did you first become aware that
2 Barbara was coming on the golf cart?
3 A I peeked out the window.
4 Q And where was Barbara brought to?
5 A The Orange House.
6 Q Was she brought back to your room?
7 A Yes -- well, to her room.
8 Q And did you somehow then become further
9 involved with the Barbara Waters situation?
10 A I was asked by Penny, who is a Dream Team
11 volunteer, if I would take care of Barbara because
12 she had to go for the closing ceremony.
13 Q Did you observe as Barbara was moved from
14 the golf cart to her bed?
15 A She was, like, weak, very unstable. They
16 walked her into her room. She got in bed in that
17 outfit, the bathing suit.
18 Q Did you agree to look after her?
19 A I did.
20 Q And what did that involve?
21 A That involved me constantly making -- not
22 making but trying to get her to drink water and
23 waking her up.
24 Q Did someone give you instructions on what
25 to do?

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1 A I believe Penny. That's what Penny told
2 me to do. Just keep a close eye on her and try to
3 get her to drink water.
4 Q And did you do that?
5 A And I did.
6 Q For how long?
7 A Seemed like all night.
8 Q How frequently did you try to get her to
9 drink water?
10 A Probably every 20 minutes.
11 Q Did Barbara Waters' condition improve?
12 A It did.
13 Q And when did it improve?
14 A Probably somewhere around 4:00 o'clock in
15 the morning. She felt she wanted to get in the
16 shower.
17 Q Did that end your involvement with her?
18 A Pardon me?
19 Q Did that end your involvement with Barbara
20 Waters?
21 A Yes.
22 Q What did you do from there?
23 A Then I went to sleep.
24 Q How soon after that did you depart from
25 the Angel Valley Center?

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1 A That Friday morning.
2 Q The same morning? The morning after the
3 sweat lodge?
4 A Yes, ma'am.
5 Q Going back to the scene outside of the
6 sweat lodge in 2008, how many people would you
7 estimate were having some form of distress as a
8 result of having been inside the sweat lodge
9 ceremony with James Ray?
10 A 10 or more.
11 Q And is that a rough estimate?
12 A Yes.
13 Q Did other participants attempt to help
14 those participants who were in distress?
15 A Yeah. Everyone helped each other.
16 Uh-huh.
17 Q Were they -- did you ever observe -- did
18 you ever hear anyone -- did you ever hear a Dream
19 Team member instruct participants to leave others
20 alone?
21 A Yes.
22 Q What did you hear?
23 A That it's not our place to intrude on
24 their experience.
25 Q And, Miss Rock, that was the end of your

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1 involvement in James Ray events; is that true?
2 A I did do another event after the Spiritual
3 Warrior. That was in April or May. It was called
4 "Modern Magic" in Dana Point, California.
5 Q Was that the end of your involvement in
6 any further sweat lodges with James Ray?
7 A Yes, ma'am.
8 Q Thank you.
9 Thank you, Judge.
10 THE COURT: Thank you, Ms. Polk.
11 Mr. Kelly?
12 CROSS-EXAMINATION
13 BY MR. KELLY:
14 Q Miss Rock, you paid money to go to the
15 Spiritual Warrior, correct?
16 A Yes, sir.
17 Q And after this experience, then you paid
18 money a second time to go to the Modern Magic in
19 California; correct?
20 A Yes, sir.
21 Q And when you wrote that check to pay money
22 to attend these events, you wrote it to an entity
23 known as James Ray International; correct?
24 A JRI. Yes, sir.
25 Q And I looked at these photographs We're

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1 looking at Exhibit No 67 on the monitor. Is this a
2 Dream Team member in the blue shirt in exhibit --
3 **A. The one with the hat on?**
4 **Q Yes**
5 **A. Yeah. That's Penny.**
6 **Q And she's wearing a blue shirt, correct?**
7 **A. Uh-huh.**
8 **Q Yes?**
9 **A. Yes, sir.**
10 **Q And it says "Dream Team"; correct?**
11 **A. Yes.**
12 **Q Can you read what it says under the "Dream**
13 **Team"?**
14 **A. I can't.**
15 **MR. KELLY: I'm sorry. Sorry. I apologize.**
16 **Judge, may I approach the witness?**
17 **THE COURT: Yes.**
18 **Q BY MR KELLY: Miss Rock, I'm handing you**
19 **what has been admitted as Exhibit 64 In Exhibit 64**
20 **there is two individuals, one of whom has a Dream**
21 **Team international -- excuse me A Dream Team**
22 **T-shirt on, correct?**
23 **A. Yes.**
24 **Q. And that's a closer photograph Can you**
25 **see where it says underneath the words "Dream Team,**

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1 James Ray International?"
2 **A. I can't see that clearly. No.**
3 **Q You don't have any reason to dispute**
4 **that's what it says; correct?**
5 **A. I don't.**
6 **Q And, in fact, after this event in 2008,**
7 **your husband, Mark Rock, became a member of the**
8 **Dream Team; correct?**
9 **A. Yes, sir.**
10 **Q And the reason I ask you that question is**
11 **this You would agree with me that Sheryl Stern was**
12 **either a volunteer or an employee of James Ray**
13 **International, correct?**
14 **A. Correct.**
15 **Q And my questions are focused now during**
16 **the event in 2008 at Angel Valley Okay?**
17 **A. Sure.**
18 **Q And she was assigned certain**
19 **responsibilities to help the folks participating in**
20 **this particular event, correct?**
21 **A. Correct.**
22 **Q And when you communicated with Dream Team**
23 **members to ask them questions, they would direct you**
24 **to various activities, correct?**
25 **A. Correct.**

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1 **Q. So, as an example, when you went on your**
2 **Vision Quest, your contact was with one or more**
3 **Dream Team members, correct?**
4 **A. Yes.**
5 **Q. And if I understand you correctly, the**
6 **only time you had contact with Mr. Ray himself was**
7 **during these public presentations Fair statement?**
8 **A. Fair.**
9 **Q So let's use this as an example: During**
10 **the Vision Quest Mr Ray did not come out to the**
11 **Vision Quest to visit with you; correct?**
12 **A. Correct.**
13 **Q He didn't instruct you as to where to go**
14 **set up your Vision Quest, correct?**
15 **A. Correct.**
16 **Q And he didn't see you after you completed**
17 **your Vision Quest?**
18 **A. Correct.**
19 **Q. You knew from these various James Ray**
20 **International Dream Team members how to sequentially**
21 **go through the activities during 2008, correct?**
22 **A. Correct.**
23 **Q. And these folks that are the --**
24 **Judge, I'll publish Exhibit 49 just for**
25 **the benefit of counsel and the Court Sometimes it**

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1 helps when you blow things up -- you can see the
2 word "International " Prior to the word
3 "International," it says "James Ray" and gives the
4 internet address, www.jamesray.com. Some kind of
5 corporate entity; correct?
6 **A. Yes.**
7 **Q. Now, during these activities you had paid**
8 **money and you were free to participate in any or all**
9 **of the activities offered during that weekend in**
10 **2008, correct?**
11 **A. Correct.**
12 **Q. So, as an example, if you said hey, I**
13 **don't want to eat lunch, you wouldn't have to eat**
14 **lunch; correct?**
15 **A. Correct.**
16 **Q. If you said I don't want to participate in**
17 **the Vision Quest, you would not have to go**
18 **participate in the Vision Quest, correct?**
19 **A. Correct.**
20 **Q. And also if you did not want to**
21 **participate in the sweat lodge, you would not have**
22 **to participate in the sweat lodge, correct?**
23 **A. Correct.**
24 **Q And, in fact, in viewing the evidence in**
25 **this case that's been admitted for this hearing and**

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1 listening to some testimony that you didn't get to
2 hear, I believe -- or it's my understanding that
3 many people did not participate in the sweat lodge
4 when it began, correct?
5 **MS. POLK:** Objection to the
6 mischaracterization.
7 **MR. KELLY:** I'm going to rephrase my question.
8 **Q** When the sweat lodge began in 2008, there
9 were Dream Team members outside, correct?
10 **A.** Correct.
11 **Q** They didn't participate in the sweat
12 lodge, correct?
13 **A.** Correct.
14 **Q** There were Dream Team members inside;
15 correct?
16 **A.** Yes.
17 **Q** One of whom was Sheryl Stern, right?
18 **A.** Was an employee, not a Dream Team.
19 **Q.** Okay Thank you for that clarification
20 So she's an employee versus a Dream Team What is
21 your understanding as to the difference?
22 **A.** In my person opinion, a Dream Team is a
23 volunteer. So, therefore, they don't know exactly
24 everything there is to know. I believe that Sheryl
25 Stern being an employee --

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1 **Q** She should know more?
2 **A.** She should know more.
3 **Q** Know more about what?
4 **A.** About what's going on.
5 **Q.** Okay So you would agree --
6 **A.** About what's going to happen next or
7 whatever. She had more experience is what I'm
8 trying to say.
9 **Q** Okay. So she would know through the
10 public presentations to when lunch was served, when
11 the Vision Quest was going to happen, to the sweat
12 lodge, where those events were a surprise to a new
13 person like yourself, correct?
14 **A.** Correct.
15 **Q.** And she might have more knowledge in that
16 regard than a volunteer such as this Dream Team
17 member, correct?
18 **A.** Correct.
19 **Q** These folks, these Dream Team members,
20 were nice people, correct?
21 **A.** Sure, they are.
22 **Q** Helpful, correct?
23 **A.** Yes.
24 **Q** And you and the Dream Team were
25 participating in this spiritual event back in 2008,

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1 correct?
2 **A.** Correct.
3 **Q** Let me ask you some background questions
4 about -- you're married to Mark Rock?
5 **A.** I am.
6 **Q.** You and Mark live here in Yavapai County
7 correct? Now?
8 **A.** Yes, sir.
9 **Q** You're from Illinois?
10 **A.** Yes.
11 **Q** What did you do for a living then?
12 **A.** I was in sales with new construction.
13 **Q** And your husband -- was he in
14 construction?
15 **A.** He was also in the same business as
16 myself.
17 **Q.** How many years did you and he engage in
18 that business?
19 **A.** Over 10.
20 **Q.** And was this a retirement move to Yavapai
21 County?
22 **A.** Yeah.
23 **Q.** Did you go to college?
24 **A.** No.
25 **Q.** Did you take any type of specialized

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1 training as it relates to medicine?
2 **A.** No.
3 **Q.** Physiology?
4 **A.** No.
5 **Q** Biology?
6 **A.** No.
7 **Q.** Chemistry?
8 **A.** No.
9 **Q** Are you a registered nurse?
10 **A.** No.
11 **Q.** Medical doctor?
12 **A.** No.
13 **Q** EMT?
14 **A.** No.
15 **Q.** How about a first-aid class? Did you ever
16 take any of those?
17 **A.** I did several years ago.
18 **Q** Did you get a certification from Red
19 Cross?
20 **A.** Yes.
21 **Q** CPR? Was that included?
22 **A.** Yes.
23 **Q** Were you aware in 2008 that there was a
24 medical doctor who was an actual participant of this
25 event?

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1 A. No, sir.

2 Q I have a transcript, and we have marked it
3 as an exhibit for purposes of identification as
4 Exhibit 126 in this proceeding And it's dated
5 September 21, 2010. And it memorializes a
6 conversation between you and Deputy Diskin Do you
7 recall that conversation?

8 A. I recall him -- a conversation with the
9 detective. Yes.

10 Q Was that conversation in person or over
11 the telephone?

12 A. In person.

13 Q Where did it take place?

14 A. It took place at Angel Valley.

15 Q During -- and the purpose was, my
16 understanding, was for Detective Diskin to interview
17 you in regards to events which had occurred in
18 2008 Correct?

19 A. Correct.

20 Q How did it come about? How did you find
21 out that the detective wanted to interview you?

22 A. I don't recall, honestly.

23 Q Well, it wasn't a coincidental or random
24 meeting, I take it? Correct?

25 A. Correct.

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1 Q So how did it come about that you ended up
2 as a witness in this case?

3 A. I believe how it all transpired was that
4 they wanted to speak to Mark, my husband. And then
5 they became aware that I was there and I had also
6 participated in James Ray's Spiritual Warrior in
7 2008.

8 Q And, in fact, they interviewed your
9 husband before they interviewed you, correct?

10 A. I don't recall how.

11 Q Do you recall being present during your
12 husband's interview?

13 A. Yes, I do.

14 Q. And the interview took place at Angel
15 Valley?

16 A. Yes, sir.

17 Q Do you know why there?

18 A. I don't know the reason why. No.

19 Q Were you living at that time in the
20 Yavapai County area?

21 A. Yes, sir.

22 Q And they didn't ask to come to your house;
23 correct?

24 A. I'm living at Angel Valley.

25 Q. Listen to my question. It's real simple.

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1 Did they not ask you -- or did they not ask you to
2 conduct the interview at your home, correct?

3 A. You didn't hear me.

4 Q I didn't?

5 A. I'm living at Angel Valley.

6 Q. Okay And how long have you lived at
7 Angel Valley?

8 A. Since, I believe, August 21st, 2010.

9 Q. And are you employed there?

10 A. No, I'm not.

11 Q Is your husband?

12 A. No.

13 Q. Do you pay rent?

14 A. We're volunteers.

15 Q And what do you volunteer for?

16 A. We volunteer. We do work there. I'm
17 right now the guest coordinator. I help them with
18 making arrangements for people who want to come
19 visit Angel Valley.

20 Q And the purpose of these visits to Angel
21 Valley relate to spirituality; correct?

22 A. Correct.

23 Q. And you said during your direct testimony
24 that you provided an opinion that I would like to
25 ask you about. You said some folks came out of the

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1 sweat lodge in an altered state. I'd ask you to
2 explain to Judge Darrow what you mean by "altered
3 state "

4 A. By an "altered state" I mean
5 hallucinating. John who was screaming for his
6 girlfriend to get out of there was in an altered
7 state. He was not in his right mind, if you will.

8 Q Is that what you mean by an altered
9 state? Hallucinations?

10 A. Hallucinating. Just -- yeah. Not aware
11 of the reality as people who had not participated in
12 this, the sweat lodge, were aware of.

13 Q. Now, I want to clarify, Miss Rock You
14 were not in John's mind; correct?

15 A. No. I wasn't.

16 Q So you're making an assumption that he was
17 hallucinating?

18 A. I am.

19 Q We covered this with you. Have no medical
20 backgrounds whatsoever?

21 A. I don't. You're right.

22 Q Perhaps you would agree with me that if
23 John were here, he could provide a more accurate
24 depiction?

25 A. Absolutely.

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1 Q As to his experience, correct?
2 A Absolutely.
3 Q What your testimony is based on is mere
4 perceptions that you observed, correct?
5 A Absolutely.
6 MR. KELLY: Judge, I apologize. This
7 exhibit --
8 THE COURT: Mr. Li?
9 MR. LI: If I may help?
10 THE COURT: Sure.
11 Q BY MR. KELLY. When John comes out of the
12 sweat lodge in 2008, it's your opinion he's in an
13 altered state as you described that term means to
14 you, correct?
15 A Correct.
16 Q And at that time when John was in his
17 altered state at this spiritual retreat, you didn't
18 think it was necessary to call 911, correct?
19 A No. No.
20 Q You didn't believe it was necessary to
21 give John a ride to the hospital, correct?
22 A No.
23 Q You didn't believe that it was necessary
24 to call an ambulance to come retrieve John to take
25 him to the hospital, correct?

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1 A Correct.
2 Q What you were observing was the
3 manifestation of the event itself in terms of its
4 spirituality, correct?
5 A If you could rephrase that.
6 Q John never went to the hospital, correct?
7 A Correct.
8 Q No one had to provide any type of medical
9 treatment or aid to John, correct?
10 A Correct.
11 Q And, in fact, these Dream Team members
12 surround him and assist him, correct?
13 A Correct.
14 Q And what they do is they talk to him in
15 this excited state that he's in and they calm him
16 down, correct?
17 A Correct.
18 Q That's what you told Detective Diskin
19 about a month ago, correct?
20 A Correct.
21 Q After the Dream Team speaks with John when
22 he's trying to get in there to get his girlfriend,
23 he settles down and he's very calm, true?
24 A He did calm down.
25 Q Right And no one renders any additional

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1 aid, correct?
2 A Correct.
3 MS. DO: Your Honor, may I approach as well?
4 THE COURT: Yes.
5 MR. KELLY: May I approach the witness?
6 THE COURT: Yes, you may.
7 Q BY MR. KELLY: Miss Rock, I'm going to
8 show you what's been admitted as Exhibit 75 and ask
9 you is that a picture of John in the middle of the
10 photograph?
11 A This here?
12 Q Yes
13 A That's John. But that's John Kapowski.
14 I'm talking about a different John. That's not the
15 John I'm speaking of.
16 Q So who is the John that you're speaking
17 of?
18 A I don't know his last name.
19 Q Show the Judge John Kapowski
20 A Right here.
21 Q That's not the John you were talking
22 about?
23 A That is not the John I'm speaking of.
24 Q But you don't know this John's last name?
25 A I don't. All I know is that he was the

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1 boyfriends of Michelle, who was a James Ray
2 employee.
3 Q You told us that before the sweat lodge
4 began, you completed the Vision Quest You were
5 provided lunch You were told to eat a light lunch;
6 correct?
7 A Correct.
8 Q You were told to hydrate, hydrate,
9 hydrate?
10 A Correct.
11 Q And that encouragement or suggestion was
12 provided to you repeatedly to hydrate, hydrate,
13 hydrate, correct?
14 A Yes.
15 Q And there was plenty of water to hydrate
16 with, correct?
17 A Yes.
18 Q In addition to that, before going into the
19 sweat lodge you were told that it was going to be
20 very hot; correct?
21 A Yes, sir.
22 Q So this wasn't a surprise where all of a
23 sudden the temperature changed from ice cold to very
24 hot You were told before you went in this is going
25 to be a hot deal, correct?

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1 A. Yes.
 2 Q And you knew that you didn't handle heat
 3 well; correct?
 4 A. Yes.
 5 Q And so as a result of that, you became
 6 very anxious, correct?
 7 A. Yes.
 8 Q You told Ms. Polk that you were suffering
 9 some anxiety?
 10 A. I was nervous.
 11 Q And you went in anyway And your purpose
 12 in going in there was to experience the spirituality
 13 of Angel Valley on that weekend, correct?
 14 A. It wasn't the experience of Angel Valley.
 15 Q Well, I don't want to parse words with
 16 you. But my point is, ma'am, if you don't handle
 17 the heat well and if you're anxious and you're told
 18 that this is going to be extremely hot, then you
 19 fight those feelings and tendencies not to go in,
 20 and you go in and experience this; correct?
 21 A. Correct.
 22 Q And the reason you're doing that, I
 23 suppose, some spiritual reason, correct?
 24 A. Well, for a spiritual reason and to not
 25 have any regrets that I didn't go in there and play

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1 full on.
 2 Q. And we talked about this a moment ago.
 3 You were free not to go in, correct?
 4 A. Absolutely.
 5 Q. And everyone else there was free not to go
 6 in; correct?
 7 A. Correct.
 8 Q Including John, the John with no last
 9 name, correct?
 10 A. Correct.
 11 Q And when this meeting took place prior to
 12 the sweat lodge and Mr Ray was describing the
 13 temperature in the sweat lodge, you believed that
 14 that was sensationalist, correct?
 15 A. Yes, I did.
 16 Q In other words -- and I've heard or read
 17 other people call it a tongue in cheek about dying
 18 Nobody was serious about that, correct?
 19 A. Well, it does seem to be the whole topic
 20 the whole week of Spiritual Warrior.
 21 Q I would assume --
 22 MS. POLK: If the witness can be allowed to
 23 finish her answer, I'd appreciate it.
 24 THE COURT: Ma'am, did you finish your answer?
 25 THE WITNESS: I was done.

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1 Q BY MR. KELLY If we're going to discuss
 2 spirituality, necessarily we're going to discuss
 3 death, true?
 4 A. True.
 5 Q. And when this meeting took place prior to
 6 the sweat lodge in 2008, you believed that those
 7 statements were sensationalized; correct?
 8 A. I did believe that.
 9 Q. And you mentioned a term, playing full on,
 10 correct?
 11 A. Yes, sir.
 12 Q. And that was giving your maximum
 13 emotional, mental, physical effort to receive as
 14 much benefit from this weekend as possible;
 15 correct?
 16 A. Yes.
 17 Q. And people varied in regards to how much
 18 they could play full on; correct?
 19 A. Correct.
 20 Q. You went into the sweat lodge. You sat
 21 down. You saw Sheryl Stern in the sweat lodge with
 22 you; correct?
 23 A. Yes.
 24 Q You knew Sheryl Stern was an employee of
 25 JRI?

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1 A. Yes.
 2 Q Which is the acronym for James Ray
 3 International; correct?
 4 A. Yes.
 5 Q You knew she was the go-to person if you
 6 were in trouble, correct?
 7 A. Yes.
 8 Q. You made it through a round and you left;
 9 correct?
 10 A. Yes.
 11 Q You left on your own free will?
 12 A. Yes.
 13 Q. And when you left, you told
 14 Detective Diskin that you were proud of making it
 15 through that first round; correct?
 16 A. Yes.
 17 Q. And what you meant by that was that you
 18 had played full on to the best of your ability, and
 19 then exercising free will you left the sweat lodge
 20 and you had received the benefit that you had paid
 21 for. Fair statement?
 22 A. Fair.
 23 Q Now, Mr Ray would present these group
 24 meetings and encourage people to play full on,
 25 exceed their physical and mental limits, correct?

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1 A. Yes.
2 Q. It's kind of the focus of his seminars,
3 right?
4 A. Yes.
5 Q. And the goal of that is to make you a
6 better person, correct?
7 A. Yes.
8 Q. Now, at no time did Mr. Ray prevent you
9 from leaving the sweat lodge, correct?
10 A. Correct.
11 Q. At no time did Mr. Ray prevent anyone from
12 leaving that sweat lodge, correct?
13 A. Correct.
14 Q. Then after you leave the sweat lodge -- we
15 have some various photographs of -- that were taken
16 by several people of the events after the sweat
17 lodge. I don't know if you've had a chance to see
18 them. Have you?
19 A. I don't believe I have.
20 Q. Take a look at --
21 If I may I approach?
22 THE COURT: Yes.
23 Q. BY MR. KELLY: Exhibit 45 in evidence. Do
24 you recognize anyone in those photographs?
25 A. No.

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1 Q. What I'm going to do, with the Court's
2 permission, is hand you a stack of photographs, all
3 of which have been admitted into evidence, and ask
4 you if you can identify yourself, your husband,
5 Barbara Waters or John with no name.
6 MS. POLK: Counsel, could I have exhibit
7 numbers for which you've handed the witness.
8 MR. KELLY: I've handed her a stack. I don't
9 know the numbers. If she identifies them, we'll --
10 THE COURT: They're all the 2008 obviously?
11 MR. KELLY: They're from 2008, and they've all
12 been admitted.
13 THE COURT: Did you give her all the
14 photographs or --
15 MR. KELLY: No. But I can.
16 THE COURT: Here's a list if that helps.
17 Q. BY MR. KELLY: Did you get through them?
18 A. The only picture that I found was the one
19 of Barbara Waters. There is no picture of John,
20 myself or Mark in any of these.
21 Q. And the picture that you're referring to
22 is Exhibit 29, for the record, this photograph?
23 A. Correct.
24 Q. So now I've published Exhibit 29 on the
25 monitor. Do you know that person sitting next to

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1 Barbara?
2 A. That's Chandra, C-h-a-n-d-r-a.
3 Q. She's smiling, correct?
4 A. Yes, she is.
5 Q. And if we take a look at Exhibit 67,
6 what's been in evidence, there is your friend
7 Barbara, correct?
8 A. Correct.
9 Q. And, again, several people around her this
10 time; correct?
11 A. Correct.
12 Q. Now, they're all adults, correct?
13 A. Yes, sir.
14 Q. And I don't see anyone with a cell phone
15 like they're trying to call 911. Do you?
16 A. No.
17 Q. I don't see anyone trying to carry her out
18 of there in this photograph; correct?
19 A. Correct.
20 Q. I don't see James Ray. Do you?
21 A. No, I don't.
22 Q. You kind of raised your eyebrows. It
23 bothers you that James Ray wasn't there; correct?
24 A. I wouldn't say it necessarily bothers me.
25 No.

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1 Q. Well, I believe you said in direct that
2 after the conclusion of the sweat lodge Mr. Ray
3 drank a few cups of water and went up to his room
4 Correct?
5 A. Correct.
6 Q. And I think you used the word to
7 Detective Diskin that he was more physically able to
8 withstand the effects of the sweat lodge than other
9 people. Seemed like he was in pretty good shape;
10 correct?
11 A. Sure.
12 Q. And so he took a couple glasses of water
13 and he went to his room; correct?
14 A. Sure.
15 Q. And you told us that when the sweat lodge
16 is over, all the participants could get a couple
17 drinks of water and go to their room, correct?
18 A. Absolutely.
19 Q. And, to your knowledge, ma'am, none of
20 these one two, three, four, five people surrounding
21 Barbara Waters hopped a golf cart, went up to
22 Mr. Ray's room and told him about Barbara; correct?
23 A. As far as I understand, no.
24 Q. We know you didn't go do it?
25 A. I didn't do it.

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1 Q In fact, you took care of her all night.
 2 You gave her water to help her hydrate throughout
 3 the evening because the Dream Team member asked you
 4 to do that, correct?
 5 A Yes, sir.
 6 Q Didn't call 911; correct?
 7 A Correct.
 8 Q You and your husband traveled there in a
 9 vehicle, I assume?
 10 A We flew and rented a car.
 11 Q And you didn't get in that rental car and
 12 take her to the hospital?
 13 A Correct.
 14 Q You didn't go to Mr Ray's room and tell
 15 him what the problem was, correct?
 16 A Correct.
 17 Q And Barbara Waters today is also a
 18 resident at Angel Valley, correct? Am I wrong about
 19 that? Do you still see her?
 20 A Barb Waters?
 21 Q Yes
 22 A I haven't seen her since Dana Point,
 23 California, Modern Magic.
 24 Q You saw Barbara at the next function
 25 What did you call it in California?

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1 A Modern Magic.
 2 Q She attended that?
 3 A Yes.
 4 Q So again she paid money to JRI to attend
 5 an event after the 2008 sweat lodge, correct?
 6 A Well, she was part of his World Wealth
 7 Society. So however that worked out, yes.
 8 Q And, in fact, it's my understanding that
 9 she was actually a Dream Team member for the next
 10 year event with your husband?
 11 A Yes.
 12 Q And what we're talking about is the 2009
 13 Spiritual Warrior event in October of 2009,
 14 correct?
 15 A Correct.
 16 Q Between October of 2009 until September of
 17 2010, September 21, 2010 -- and that's the date that
 18 Detective Diskin interviewed you So between the
 19 2009 incident and September 21, 2010 --
 20 A Okay.
 21 Q -- who did you talk to about what happened
 22 at Angel Valley?
 23 A Who, meaning my mother? My sisters?
 24 Q Yeah Let me try to break it down Did
 25 you speak to your husband about the events that

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1 happened in 2009?
 2 A Absolutely.
 3 Q Did you and he discuss the events that
 4 happened in 2008?
 5 A Sure.
 6 Q I'm talking about the 11-month time frame
 7 between October of 2009 and September of 2010
 8 Okay?
 9 A Okay.
 10 Q Did you and your husband do any
 11 independent research about the 2008 or 2009 event?
 12 A No.
 13 Q Did you read Sheryl Stern's statement?
 14 A Yes.
 15 Q That's my example. In addition to Sheryl
 16 Stern's statement, what other statements, if any,
 17 did you read?
 18 A I did review a copy of Julia -- her last
 19 name escapes me. Her 2008 Spiritual Warrior notes,
 20 which were available to anyone who attended in
 21 2008.
 22 Q Anything else?
 23 A No. As far as -- no.
 24 Q Have you gone on line and checked out
 25 what's been posted on line as an example?

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1 A Sure.
 2 Q And I'm talking about --
 3 A I also read Connie Joy's book.
 4 Q What book is that?
 5 A The Tragedy in Sedona.
 6 Q So you read The Tragedy in Sedona, which
 7 was published after 2009 You've accessed internet
 8 sites which provide not factual descriptions but
 9 opinions and conclusion about what happened You
 10 read Sheryl Stern's interview conducted by the
 11 Yavapai County police agencies, and you spoke to
 12 your husband?
 13 A Correct.
 14 Q What else?
 15 A Nothing else comes to mind.
 16 Q Did you talk to the Hamiltons?
 17 A Michael and Amayra. Sure.
 18 Q Were you aware that the Hamiltons have
 19 been sued by people who were injured during the 2009
 20 event?
 21 A I am aware of that.
 22 Q That there is a pending lawsuit?
 23 A I'm aware of that.
 24 Q Are you aware, then, that the Hamiltons
 25 turned around and sued JRI and James Ray?

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1 A. I am aware of that.
2 Q Have you been disclosed as a witness in
3 that case?
4 A. No, sir.
5 Q Anybody interviewed you with regard to
6 those cases?
7 A. No, sir.
8 Q You told Ms Polk that 10-plus people were
9 in distress after the sweat lodge experience in
10 2008, correct?
11 A. Correct.
12 Q. Do you recall telling Detective Diskin
13 that there were 20 to 25 people?
14 A. I don't recall that.
15 Q How many --
16 A. I said 10 or more.
17 Q Let me hand you, to refresh your
18 recollection, Exhibit 126. I'm going to ask you to
19 refer to page 10, line 6 Mr Diskin -- excuse me
20 Detective Diskin asked you the question how many
21 people would you estimate in 2008 had some type of
22 medical problem or issues during or after the sweat
23 lodge? And I mean vomiting, hallucinating or not
24 coherent. Would you please read your answer to
25 Judge Darrow?

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1 A. I responded with, I guess, that there was
2 over 60 of us. If I recall correctly. Maybe 20 to
3 25 people had some kind of adverse effect, if that's
4 what you mean.
5 Q Now, here's my -- thank you, ma'am Today
6 under oath at the witness stand you tell
7 Judge Darrow 10 people or more. You tell
8 Detective Diskin 20 to 25 people about a month ago
9 My question is are you having a problem remembering
10 how many people?
11 A. I'm not having a problem. I'd like to
12 clarify that for you.
13 Q. Okay
14 A. 10 people that were in similar condition
15 to Barbara, like passed out. There was all kinds of
16 people laying on the ground that weren't able to
17 walk out of there at their own free will at that
18 particular moment.
19 Q. Okay Now you've got to help us All
20 kinds of people Is that 3 or 25?
21 A. That would be in the 20 range.
22 Q So we have 20 people who were not able to
23 walk out of the area around the sweat lodge on their
24 own power That's your testimony?
25 A. Yeah. I believe so. I mean, this is

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1 right after the sweat lodge; correct?
2 Q That's the question.
3 A. Right.
4 Q So this is Exhibit 38. Here's two folks
5 on the ground, Exhibit 41.
6 MS. POLK: Your Honor, objection to using
7 photographs that were taken 30 minutes or more after
8 the ceremony to cross-examine a witness who did not
9 take the photographs, does not know when the
10 photographs were taken.
11 THE COURT: We haven't had a question yet.
12 Okay. Yes. If there is going to be a reference, it
13 needs to have a time frame, Mr. Kelly.
14 Q. BY MR. KELLY: Do you see the two
15 individuals in Exhibit 41?
16 A. Yes, I do.
17 Q Were those two of the people that had to
18 receive assistance in walking away from the sweat
19 lodge?
20 A. That I don't know.
21 Q Well, tell us what you do know in terms of
22 clarity as to the specific numbers and the
23 individuals who required assistance to get out of
24 this thing in 2008 And, ma'am, if you would like
25 to --

200

1 A. The only person --
2 Q Let me finish my question.
3 A. -- I know for sure that needed assistance
4 was Barb Waters.
5 Q Okay Thank you Because that's
6 consistent with the photographs that you looked
7 through. She's the lady on the ground, correct?
8 A. Correct.
9 Q. So the only person that needed assistance
10 was Barb Waters And we've discussed her. She's
11 the one that you helped in the room, Dream Team
12 member, et cetera, correct?
13 You mentioned that when you entered the
14 sweat lodge for the first round, there was chanting;
15 correct?
16 A. After the gate was closed?
17 Q Yes, ma'am.
18 A. And the ceremony began. Yes.
19 Q. Who is chanting?
20 A. James Ray.
21 Q What are the participants saying or doing?
22 A. They repeat what -- he chants. And
23 everyone starts together and then it's all
24 consistent, uniform chanting.
25 Q Does it gets pretty loud?

201

1 A. Not too loud.
2 Q Let me put up -- if you need to look at
3 this closer, please let me know Let me put up
4 Exhibit 64. Do you know a fellow by the name of Ted
5 Mercer?
6 A. I was introduced to Ted yesterday
7 afternoon sitting on the bench.
8 Q Do you recall Mr Mercer's -- after you
9 leave the sweat lodge after the first round, several
10 more rounds occur, correct?
11 A. Correct.
12 Q. And you're in proximity to the sweat
13 lodge, correct?
14 A. Yes, sir.
15 Q And do you recall seeing Mr Mercer
16 tending the fire?
17 A. I can't remember if that was him.
18 Q No
19 A. No.
20 Q I don't want to confuse you Do you
21 recall somebody tending the fire?
22 A. Absolutely. Yes.
23 Q Do you recall that person to be the same
24 person you met in the hallway?
25 A. That I -- no.

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1 Q Do you recall a lady by the front door,
2 someone referred to, I believe, as the gate keeper?
3 A. The gate keeper?
4 Q Do you know that person?
5 A. No.
6 Q Have you seen her in the courthouse today
7 or yesterday?
8 A. No.
9 Q. Miss Rock, when was it that you read
10 Sheryl Stern's statement?
11 A. I don't recall.
12 Q Can you --
13 A. I could guesstimate for you.
14 Q. Please
15 A. Sometime around the end of August of 2010.
16 Q And I saw you and your husband sitting on
17 the bench this morning when other folks were
18 testifying. And Mark had a big stack of papers with
19 a highlighter.
20 A. Uh-huh.
21 Q Were any of those papers related to this
22 case?
23 A. If the "this case" refers to testimony for
24 2008 sweat lodge, yes.
25 Q So he had -- what I saw when I walked by

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1 is he had a highlighter, had quite a few papers.
2 Were they various witness statements?
3 A. No. Those would actually be the notes
4 from Julia from 2008 Spiritual Warrior.
5 Q Okay. And explain that to me in more
6 detail, the notes.
7 A. Julia takes notes.
8 Q. And please provide Julia's last name.
9 A. I believe it starts with a "B." Julia.
10 And her husband is Ralph. Ralph was Mark's roommate
11 in 2008.
12 Q And Julia takes notes throughout the
13 weekend?
14 A. Throughout the whole event.
15 Q And your husband was reviewing those notes
16 in preparation for his testimony?
17 A. He was looking at those notes this
18 morning. Yes, sir.
19 Q. Did you look at any of them?
20 A. I did not.
21 Q Was your husband reviewing any other
22 information other than Julia's notes?
23 A. No.
24 Q. Between September 21, when you met with
25 Detective Diskin at Angel Valley and -- did I hear

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1 you say you live there free? Angel Valley?
2 A. Yes.
3 Q. Between September 1, 2010, through today,
4 have you met with any other person from the state of
5 Arizona, whether it be a prosecutor or a police
6 officer?
7 A. No.
8 MR. KELLY: Thank you, ma'am.
9 Thank you, Judge.
10 THE COURT: Thank you, Counsel.
11 MR. KELLY: Excuse me. May I reopen? Can I
12 ask one final question?
13 THE COURT: Go ahead, Mr. Kelly.
14 Q. BY MR. KELLY: You told us that
15 Detective Diskin came to Angel Valley to conduct the
16 interview with your husband, correct?
17 A. Yes.
18 Q And it was only during that interview,
19 then, that Detective Diskin discovered you were at
20 the 2008 event; correct?
21 A. I believe so.
22 Q And, again, was that interview set up at
23 the Hamilton's request? Do you know?
24 A. I don't honestly know.
25 Q. Well, let me put it this way: When did

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1 you move to Angel Valley from Illinois?
2 A. Mid August.
3 Q So between August of 2010 until
4 September 21, 2010, you nor your husband called
5 Detective Diskin to let them know where you were at,
6 correct?
7 A. I know I didn't.
8 Q. Okay You don't have any knowledge that
9 your husband did?
10 A. I don't know that.
11 Q We'll ask him
12 A. Yeah. I don't know that.
13 Q I guess my real question is were the
14 Hamiltons encouraging you to meet with the
15 government?
16 A. I wouldn't say they were encouraging us to
17 meet with anybody. No.
18 Q What would you say, then?
19 A. That they weren't involved in that
20 interview.
21 Q Okay But again, remember I asked you how
22 the interview came about? That was one of my first
23 questions
24 A. Right.
25 Q So I'm asking you did the Hamilton's

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1 arrange this interview?
2 A. That I don't honestly know. I don't know.
3 MR. KELLY: Thank you again, Miss Rock.
4 THE COURT: Thank you.
5 Ms. Polk, I have to recess at 3:10.
6 That's the full hour and a half. Also I've been
7 informed there is a time-sensitive initial I have to
8 conduct. So go ahead.
9 MS. POLK: Thank you, Judge.
10 REDIRECT EXAMINATION
11 BY MS. POLK:
12 Q Miss Rock, I'm going to give you back what
13 was marked Exhibit 126, which is the transcript of
14 your interview with Detective Diskin on
15 September 21st, 2010 You were asked by Mr. Kelly
16 to read what was at the end on page 10 And that
17 dealt with a number of people who were in some kind
18 of adverse effect at the end of the sweat lodge
19 ceremony in 2008; correct?
20 A. Correct.
21 Q. What is your -- do you stand by the answer
22 that you gave Detective Diskin in September this
23 year? Or would you like to clarify it?
24 A. I tried to clarify it. That there was
25 over -- you know-- 20 to 25 people that couldn't

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1 readily walk out of the sweat lodge and walk away,
2 that were laying on the ground for quite a while.
3 Q. And Detective Diskin had asked you -- I'm
4 sorry Go ahead
5 A. Well, and that there was 10 or so more
6 people that were there even longer than that. So
7 that's what I meant by that.
8 Q And Detective Diskin had asked you if
9 people were having problems such as vomiting,
10 hallucinating and not coherent. Did you see people
11 with problems including vomiting, hallucinating and
12 not coherent?
13 A. The not coherent and the hallucinating. I
14 don't believe I witnessed anyone physically vomit.
15 Q. At the same time that you saw people, some
16 20 to 25 people, in various stages of distress, did
17 you also see people smiling?
18 A. Yes. There were some people who came out
19 of there with exhilaration.
20 Q. You were asked questions about had you
21 reviewed a statement by Sheryl Stern, and you
22 replied that you have?
23 A. I have.
24 Q. In your opinion, was that statement by
25 Sheryl Stern accurate?

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1 A. In my opinion, yes.
2 MR. KELLY: Your Honor?
3 THE COURT: Mr. Kelly?
4 MR. KELLY: I would object. That's pure
5 speculation.
6 THE COURT: Well, the witness testified she
7 read the statement and it was accurate. I haven't
8 seen the statement myself.
9 Ms. Polk?
10 MS. POLK: Your Honor, it was suggested that
11 this witness has seen statements that somehow
12 influenced her testimony. I think it's fair
13 redirect to establish, does she believe the
14 statements she read are, in fact, accurate.
15 THE COURT: Overruled.
16 Q. BY MS POLK: You already answered the
17 question?
18 A. I did. In my opinion, yes.
19 Q. And you also answered a question from
20 Mr. Kelly about having reviewed notes prepared by
21 someone named Julia. And her last name begins with?
22 A. With a "B."
23 Q Julia was a participant in 2008?
24 A. Yes, ma'am.
25 Q. What did you observe about Julia

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1 throughout the Spiritual Warrior Seminar in terms of
2 her note taking habits?

3 A. She constantly took notes.

4 Q. What notes did you see that Julia wrote?

5 A. The notes from the beginning of the event
6 to the end of the event.

7 Q. How did you come into possession of those
8 notes to read them?

9 A. She emailed them to us.

10 Q. And, in your opinion, were the notes taken
11 by Julia accurate?

12 A. Very accurate.

13 Q. You made the comment that Barbara Waters
14 was a member of the World Wealth Society. Will you
15 tell the Judge what that was

16 A. The World Wealth Society, the way I
17 understand it, is a group that pays a lump sum of
18 money to JRI, James Ray International, and is able
19 to participate in any of the events at no cost.
20 Although they paid this initial chunk up front.

21 Q. Do you know how much that initial chunk up
22 front was?

23 A. I've heard different numbers from 75,000
24 to 60,000. If you're a couple, it's -- you know --
25 all different.

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1 Q. And how much did you pay to participate in
2 the Spiritual Warrior Seminar in September of 2008?

3 A. Over \$9,000.

4 Q. And how much did your husband pay?

5 A. The same.

6 Q. You were asked about your goal in
7 attending the seminar and in participating in the
8 sweat lodge. What was your goal?

9 A. For the sweat lodge?

10 Q. Yes

11 A. Just to go in and experience it, if only
12 for one round. That's what my goal was.

13 Q. You used the term "play full on." Where
14 did you hear -- who used that term?

15 A. James Ray.

16 Q. How did he use it?

17 A. As give it more than 100 percent.

18 Q. You told Mr. Kelly that death was the
19 whole topic the whole week?

20 A. Yes.

21 Q. How so?

22 A. Well, James wore a T-shirt, death to
23 death, the first full day. Was talking about the
24 samurais and that -- you know -- you lived
25 impeccably or honorably or you died. There was

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1 people that would have to fall on the ground and
2 stay in that position. We had the graveyard, which
3 was part of the samurai game. There was a lot
4 around death and rebirth, which was part of the
5 whole sweat lodge, was a rebirth.

6 Q. And who said that?

7 A. James Ray.

8 Q. Can you recall more specifically what he
9 said about death and rebirth?

10 A. I can't right off the top of my head. No.

11 Q. Mr. Kelly established with you that you're
12 not a doctor nor do you have medical training. Why
13 were you asked to look after Barbara Waters in light
14 of that?

15 MR. KELLY: Your Honor, objection. Speculating
16 as to why some Dream Team member asked her.

17 THE COURT: Well, just in terms of what was
18 expressed, I know it's hearsay. Just as long as I
19 know the basis for Miss Rock's answer.

20 You may answer that if you can.

21 THE WITNESS: Because I was the only person
22 there to help Barbara. I mean, because I was
23 staying there because I wasn't well myself. So that
24 would be my assumption.

25 Q. BY MS. POLK: Prior to the sweat lodge

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1 ceremony performed by James Ray in 2008, had you
2 ever done a sweat lodge before?

3 A. No, ma'am.

4 Q. Did you know what to expect?

5 A. No, ma'am.

6 Q. Did you know if what you were seeing in
7 terms of people in distress was normal or not?

8 A. No.

9 Q. Who was in charge, in your opinion, at
10 that sweat lodge ceremony?

11 A. James Ray.

12 Q. And when you were asked questions about --
13 by Mr. Kelly about why you didn't call 911, did you
14 feel it was your position?

15 A. No.

16 Q. Did you know whether the circumstances
17 called for emergency intervention or not?

18 A. No.

19 Q. Did you feel it was your position to make
20 a decision that Barbara Waters should or should not
21 go to the hospital?

22 A. No.

23 MS. POLK: Thank you, Mrs. Rock.

24 Thank you, Judge.

25 THE COURT: Thank you.

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1 Counsel, we will recess. But may
2 Miss Rock be excused as a witness?
3 MS. POLK: Yes, Your Honor.
4 MR. KELLY: Yes.
5 THE COURT: Miss Rock, you will be excused as a
6 witness. I think you've been told that the rule of
7 exclusion of witnesses has been invoked, meaning you
8 can't talk about your testimony or this case with
9 any other witness in this hearing until the hearing
10 is completed. That might be today or it may go next
11 week, possibly for some time.
12 So you understand how that rule works?
13 THE WITNESS: I do.
14 THE COURT: Thank you.
15 We will recess until 3:30.
16 (Recess)
17 THE COURT: The record will that show the
18 attorneys are present.
19 Ms. Polk?
20 MS. POLK: State calls Mark Rock, please.
21 THE COURT: Sir, if you'd please step to the
22 front of the courtroom here. And then raise your're
23 right hand and be sworn by the clerk.
24 MARK ROCK,
25 having been first duly sworn upon his oath to tell

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1 the truth, the whole truth, and nothing but the
2 truth, testified as follows:
3 THE COURT: Please be seated here at the
4 witness stand. Please begin by stating your full
5 name.
6 THE WITNESS: My name is Mark Rock.
7 THE COURT: Thank you.
8 Ms. Polk?
9 MS. POLK: Thank you.
10 DIRECT EXAMINATION
11 BY MS. POLK:
12 Q Good afternoon, Mr. Rock
13 A Good afternoon.
14 Q You are married to Vicky Rock?
15 A That's correct.
16 Q And how long have you been and Vicky been
17 married?
18 A We've been married 26 years.
19 Q Are you currently living in the Verde
20 Valley area?
21 A Yes, I am.
22 Q Where do you and Vicky live?
23 A Vicky and I live at Angel Valley Retreat.
24 Q How long have you been residing there?
25 A Since around August 21st of 2010.

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1 Q Are you working there?
2 A No.
3 Q Are you volunteering there?
4 A I am volunteering there.
5 Q And Vicky as well?
6 A Yes.
7 Q Prior to coming to Angel Valley Retreat
8 Center in August of this year, where were you
9 living?
10 A Shanai, Illinois.
11 Q And going back to the year 2008, where
12 were you living then?
13 A Shanai, Illinois.
14 Q At some point in your life did you come to
15 know of James Ray?
16 A Yes, I did.
17 Q How was that?
18 A It was through the movie The Secret and
19 then a free event that he had probably three months
20 later.
21 Q Did you attend -- after that free event,
22 did you attend a paid event?
23 A Yes, I did.
24 Q What event was that?
25 A It was Harmonic Wealth Weekend.

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1 Q Do you recall what year that was?
2 A That would have been, I believe, 2006.
3 Q Did you attend a subsequent event that was
4 a paid event?
5 A Yes.
6 Q What was that?
7 A That was called "The Dreamer and the
8 Dream."
9 Q Did you attend a subsequent event to that?
10 A No.
11 Q Did you attend a -- something called a
12 Spiritual Warrior Seminar?
13 A Yes, I did.
14 Q When was that?
15 A That was in September of 2008.
16 Q Was that your third paid event of James
17 Ray that you attended?
18 A That's correct.
19 Q Do you recall how much you paid to attend
20 the Spiritual Warrior Seminar?
21 A It was in the \$9,000 range. All costs was
22 over 20,000 for Vicky and I.
23 Q The event -- the Spiritual Warrior event
24 took how many days?
25 A It was over a five-day period.

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1 Q And during that five-day period did you
2 participate in the event called the "Vision Quest"?

3 A Yes, did I.

4 Q Will you describe for the Court what that
5 was

6 A The Vision Quest was 36 hours out in a
7 circle that you created out in the desert. It was
8 the high dessert of the Sedona area. It was where
9 you would recapitulate and write about your
10 experiences. And it was done without any food or
11 water.

12 Q What day of the Spiritual Warrior Seminar
13 did the Vision Quest occur on?

14 A That occurred on a Wednesday.

15 Q How many days into the event was this?

16 A It was the third full day.

17 Q How many days and nights were you out on
18 the Vision Quest?

19 A One full day.

20 MR. KELLY: Excuse me, Your Honor. Again, I
21 know I've made this objection during the testimony
22 of the previous witness, but I ask the rhetorical
23 question, what does this have to do with 404(b) and
24 prior act evidence?

25 THE COURT: I note the objection. Again, I've

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1 addressed it. It's overruled.

2 You may continue, Ms. Polk.

3 Q BY MS POLK: What was your answer to how
4 many?

5 A It was 36 hours approximately all
6 together.

7 Q Starting at approximately what time of day
8 or night?

9 A It was about right around 12:00 o'clock on
10 the Tuesday, and we came back around 6:00 a.m. on
11 Thursday morning.

12 Q When you say "12:00 o'clock," was that
13 noon or midnight?

14 A It was midnight.

15 Q During that time you had no food and no
16 water?

17 A That's correct.

18 Q What occurred, then, back at the retreat
19 center after 6 00 a m after you came back?

20 A Well, we came back, and there was a
21 breakfast. They told us to eat lightly that day
22 because of what was coming that later afternoon.

23 Q Did you know what was coming later that
24 afternoon?

25 A I had heard something about a sweat lodge,

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1 but I wasn't fully informed.

2 Q Did the event itself inform you that the
3 sweat lodge was coming?

4 A The event -- it was that afternoon that we
5 were given the full details.

6 Q You said you had heard something earlier
7 Who did you hear that from?

8 A One of the participants. I don't remember
9 who.

10 Q If you could distinguish between the
11 official spokespeople for the event versus just
12 hearing it casually, which one was it that you heard
13 that maybe a sweat lodge was coming?

14 A I had never done a sweat lodge, so the
15 person -- I wasn't fully informed until the James
16 Ray people told me in the afternoon.

17 Q And tell The Court what were the events
18 leading up to you learning officially that you were
19 to do a sweat lodge ceremony?

20 A What were the events?

21 Q Yes. You told us you had breakfast?

22 A Right. Breakfast. And then we were in
23 what is called the "Crystal Hall." And we were
24 reviewing a lot of what he had gone over prior to
25 that. And right prior to the going -- getting ready

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1 for the sweat lodge we were reviewing the movie The
2 Last Samurai.

3 Q When were you officially told you were
4 going into a sweat lodge?

5 A I would say around 2:00 o'clock in the
6 afternoon.

7 Q What time did you go into the sweat lodge?

8 A About 3:00 o'clock.

9 Q Was there a briefing from James Ray before
10 you went into the sweat lodge?

11 A There was a little bit of a briefing --
12 yes -- telling us some safety rules as far as which
13 direction you would enter and which one you would
14 exit. Pretty brief. Some of the people asked
15 questions. One of the ladies that asked the
16 question was Tari Coffey. And she was pregnant at
17 the time. And she asked James Ray if it was safe
18 for her to go in the sweat lodge. And he answered
19 absolutely.

20 Q What else did James Ray tell you about
21 what to expect inside the sweat lodge?

22 A He had stated that it would be hot and
23 that he had expressed how hot his sweat lodges are.
24 He had expressed how that some of the local Indian
25 folk, Native Americans, had come and said that it's

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1 not -- it's like not no sweat lodge anybody else has
2 done. That type of thing.
3 Q It's like no sweat lodge like anyone else
4 has done, referring to what?
5 MR. KELLY: Objection, Your Honor. Pure
6 speculation.
7 THE COURT: Well, if Mr. Rock can answer that
8 in a fashion what his basis for his answer would be,
9 I would need to know that.
10 Q BY MS POLK Do you know what was being
11 referred to by that statement?
12 A What was being referred to is that it's
13 hotter than any other sweat lodge that any of the
14 local Native Americans had ever experienced or seen.
15 MR. KELLY: Your Honor?
16 THE COURT: Mr. Kelly?
17 MR. KELLY: I understand the scope of
18 Rule 104. But I would submit, Judge, we're far
19 exceeding that when we get into levels of double and
20 triple hearsay relating to far exceeding what any
21 Native American may have experienced.
22 THE COURT: Well, for one thing, I think some
23 of this comes from what Mr. Ray is indicating.
24 That's the testimony. So that takes away some of
25 the hearsay aspect of it. But, Mr. Kelly, obviously

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1 you are going to be able to cross-examine. Right
2 now it's not clear to me at all that there is any
3 real basis for what Mr. Rock has said. Perhaps it
4 will be -- there may be some elaboration. I don't
5 know if that's what he's guessing at.
6 Ms. Polk?
7 Q BY MS POLK Can you tell me and tell the
8 Court what specifically you heard Mr Ray say about
9 the Native Americans and Mr Ray's sweat lodge
10 A What I heard Mr. Ray say is that he -- the
11 Native Americans had come and seen his sweat lodge
12 and had stated to him and to others that this was
13 the hottest sweat lodge they'd ever seen. It's like
14 no other sweat lodge that any Native American would
15 have experienced.
16 Q And that's what Mr Ray told you and the
17 other participants?
18 A That's what he told me and the other
19 participants. He was -- in my opinion, he was
20 boasting of how hot and how intense his sweat lodges
21 are.
22 Q Did James Ray make any statements to you
23 about the possibility of passing out or fainting
24 inside the sweat lodge?
25 A Yes, he did.

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1 Q. What did he say?
2 A. He said don't worry about it. If you pass
3 out, we'll drag you out after it's over.
4 Q. Did Mr. Ray make any statements to you and
5 the other participants about the possibility of
6 dying inside the sweat lodge?
7 A. Well, the whole Spiritual Warrior event
8 was about death and rebirth.
9 Q. In what sense? What do you mean?
10 A. Well, death and rebirth as being the old
11 self dying and the new self emerging.
12 Q And specifically inside the sweat lodge
13 did Mr Ray make any comment to you and the other
14 participants about that nobody has died inside the
15 sweat lodge yet?
16 A. Yes. He said that.
17 Q Tell the Court --
18 A. He said nobody has ever died in one of my
19 sweat lodges yet is his answer to that.
20 Q. And that was part of the presweat lodge
21 briefing?
22 A. It was part of the presweat lodge briefing
23 when we were in the Crystal Hall before we went down
24 to the sweat lodge.
25 Q. Did Mr. Ray make any comments to the

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1 participants about what might cause you to pass out
2 inside the sweat lodge?
3 A. Well, it was that we were going to enter
4 an altered state because obviously the oxygen is at
5 a lower level as the heat rises and that you might
6 pass out, but that no one has ever died in one of
7 his sweat lodges. So we'll just drag you out by the
8 ankles when we are finished.
9 Q. Did Mr Ray explain to you what he meant
10 by using the term "altered state"?
11 A. Well, yeah. Because there was many, many
12 different events during the course of that week that
13 brought you to an altered state. The first one was
14 the breathing technique that he used, which was to
15 hyperventilate and to breath and over oxygenate your
16 blood, which would bring you to an altered state,
17 which would bring you to a higher level of being.
18 Q Can I ask you to explain to the Court when
19 you use the term "altered state" what do you mean?
20 A. What I mean by "altered state" is that
21 it's like you go into a hallucinogenic state.
22 Obviously you're not using any drugs. But you're
23 using your body, your breathing, whether it is over
24 oxygenating your blood or under oxygenating your
25 blood.

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- 1 Q. How did feel about going into the sweat
2 lodge after that briefing?
3 A. I felt a little apprehensive, but I know
4 that I know myself and that I was going to stay in
5 there and experience it as long as I could. And if
6 I chose to leave, I would leave.
7 Q Did you feel safe going into it?
8 A. Yes. I did at the time.
9 Q. And what made you feel safe?
10 A. What made me feel safe was the other Dream
11 Team members, his supporters that were there helping
12 the people that were the participants and his staff
13 and his casual demeanor about -- you know -- nobody
14 has died yet. It's not that life threatening.
15 Q. Did Mr Ray point out to you or explain to
16 you the role of the Dream Team during the sweat
17 lodge ceremony?
18 A. He said that they would be there to assist
19 you and help you if you needed help during the time
20 you were in the sweat lodge.
21 Q Did you then go into the sweat lodge?
22 A. Yes, I did.
23 Q. You told us it started around 3.00 p m ?
24 A. Yes.
25 Q. Did you come out of that sweat lodge --

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- 1 we're talking about 2008 still -- at some point?
2 A. Yes, I did.
3 Q. Tell us what happened and what made you
4 come out.
5 A. After two rounds it started to get really,
6 really hot, and I got to be very uncomfortable, and
7 I was closer to the center, which is the pit. And I
8 felt uncomfortable that I couldn't stay in there any
9 longer. So I came out after the third round.
10 Q What did you do once you got out?
11 A. Once I got out, they hosed me down with
12 water. I was able to recoup. And I felt fine. And
13 then after that the next round I went back in.
14 Q Do you recall what round it was when you
15 went back in?
16 A. I was in for the fifth round. So I
17 skipped a round.
18 Q. And then how many more rounds were there?
19 A. I believe there was seven or eight rounds.
20 Q. When you went back in around the fifth
21 round, did you have a different position inside the
22 sweat lodge?
23 A. Yes, I did.
24 Q How did that position compare to the
25 position you had when you first were in there?

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- 1 A. It wasn't as hot because I was more
2 against the wall. And at that time I had seen other
3 people were laying down face down. So I laid face
4 down, and it was easier to stay in there.
5 Q. Were fewer people in the sweat lodge at
6 that time?
7 A. Yes, there were.
8 Q. About how many fewer would you say?
9 A. I would say probably about a third of the
10 group was out.
11 Q At some point did you become aware of
12 Sheryl Stern and what she was doing with respect to
13 the sweat lodge?
14 A. Yeah. Because when I was out, she was
15 actually helping people come in and out of the sweat
16 lodge.
17 Q And let me just back up a little bit.
18 Explain to the Court who Sheryl Stern was.
19 A. Sheryl Stern is one of James Ray's
20 employees. And she had been him for quite some
21 time. She had entered the sweat lodge with all of
22 us but at some point had come out and then was going
23 in and out of the sweat lodge.
24 Q. How was she helping people?
25 A. She was watching over them, making sure

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- 1 they were getting out safely, keeping away from the
2 center pit where the fire is, or the hot rocks I
3 should say.
4 Q. Once Sheryl Stern went out, did she go
5 back in?
6 A. She was only going in and out between
7 rounds, from what I could tell.
8 Q. And what was she doing inside between
9 rounds?
10 A. Between rounds she was -- like I said, she
11 would assist people in helping them get out and
12 whoever it appeared -- whoever needed help she was
13 helping.
14 Q. Did you become aware at some point of
15 something Sheryl Stern was doing to the flaps or the
16 edges of the sweat lodge itself?
17 A. What I did become aware of was -- is that
18 when I went back in after the second time I left, I
19 was laying down between Jennifer Wong and Tari
20 Coffey. And they were lifting the edge of the sweat
21 lodge to get oxygen in.
22 Q. And let me have you explain that to the
23 Court. Where were Jennifer and Tari when they were
24 lifting the edge? Were they inside the out?
25 A. They were inside the sweat lodge. And

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1 they were laying down face down. And as it would
2 get hotter and hotter, they would just use their
3 hand and lift the edge up a little bit. And they
4 were the ones that showed me how to do that. That's
5 where I learned. And I came to learn later that the
6 person that told them to do that was Sheryl Stern.

7 Q. Was that something that could be done
8 openly inside the sweat lodge?

9 A. It was done in such a manner that people
10 weren't noticing it.

11 Q. Was there a reason why people should not
12 notice it?

13 A. At that time, no. I didn't understand if
14 there was or wasn't.

15 Q. Later did you come to understand more
16 about that?

17 MR. KELLY: Your Honor?

18 THE WITNESS: Yes, I did. In 2009.

19 THE COURT: Mr. Kelly?

20 MR. KELLY: Object on the basis of lack of
21 foundation. And again we're going in multiple
22 levels of hearsay.

23 THE COURT: Let me return to the last part
24 about how hot the sweat lodge might have been and
25 what some Native Americans might have said.

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1 And, Ms. Polk, I'm not going to consider
2 that for the truth of the matter asserted
3 whatsoever. I'm not going to do that.

4 I thought, Mr. Kelly, your objection on
5 that point had to do with Mr. Rock's just
6 interpretation of nothing else like it or something
7 to that effect and did that mean hotter or not. I
8 thought you were talking about that. I'm not going
9 to consider this hearsay for the truth of what's
10 asserted.

11 Ms. Polk, in this if you're offering this
12 for the truth of the matter asserted, I would ask
13 for more foundation.

14 MS. POLK: Judge, I'm not. I'm just trying to
15 establish the background leading up to my next
16 question, then.

17 Q. In 2008 Mr. Rock -- in 2008 were you
18 lifting the side of the sweat lodge when you were
19 inside?

20 A. Yes.

21 Q. When did that occur?

22 A. It happened in the last two rounds that I
23 was in the sweat lodge.

24 Q. Why did you do that?

25 A. Because it helped me to stay in the sweat

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1 lodge, and it gave me the little bit of oxygen that
2 I needed to continue and finish the event.

3 Q. Did you do it at a certain time in
4 relationship to the opening of the flap?

5 A. That would be 2009.

6 Q. And in 2008 did you do it at any time
7 then?

8 A. I followed. I was following. I don't
9 recall, and I was following Jennifer and Tari's
10 lead.

11 MR. KELLY: Objection. Foundation. He doesn't
12 recall.

13 THE COURT: Sustained.

14 Q. BY MS. POLK: Did you, Mr. Rock, in 2008
15 while you were inside lift the flap or the edge of
16 the sweat lodge coverings while the ceremony itself
17 was going on?

18 A. Yes.

19 Q. About how many times did you do that would
20 you say?

21 A. Maybe five or six.

22 Q. Why did you do that?

23 A. I did that because I felt that I needed
24 the oxygen so that I could stay in the sweat lodge
25 until the end.

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1 Q. In 2008 did you become aware of certain
2 individuals who appeared to be in some state of
3 distress?

4 A. Yes.

5 Q. If you recall in order, who was the first
6 person you became aware of?

7 A. The first person I became aware of was
8 Barb Waters. Because after I got out of the sweat
9 lodge, I seen them drag her out of the sweat lodge
10 and carry her to a golf cart and bring her, I
11 assume, back to her room.

12 Q. You stayed in the sweat lodge in 2008 to
13 the end?

14 A. Yes.

15 Q. After leaving and going back in?

16 A. Yes.

17 Q. When the ceremony was over, you left?

18 A. I came out of the sweat lodge.

19 Q. Do you know when you came out where was
20 Barbara Waters?

21 A. When I came out initially, she was still
22 in the sweat lodge.

23 Q. Do you know how she got out of there?

24 A. I know from people telling me that they
25 carried her out.

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1 MR. KELLY: Objection, Your Honor. Move to
2 strike everything after "people telling me."

3 THE COURT: I don't believe, Mr. Kelly, that --
4 again, I encourage the parties to make objections if
5 you want to alert your concern with the validity of
6 the testimony. It's hearsay. I understand that.

7 It will be given weight accordingly.

8 You may continue.

9 Overruled.

10 Q BY MS POLK: Did you see Barbara Waters
11 being brought out of the sweat lodge?

12 A I saw her being picked up and put on a
13 golf cart. And she was passed out. She wasn't
14 awake.

15 Q When you saw her picked up, was she
16 already outside?

17 A Yes.

18 Q Do you have any recollection today as to
19 how people became aware that Barbara Waters was
20 still inside the sweat lodge?

21 A From what I recall, it was some of the
22 people that were on the outside of the sweat lodge
23 that didn't go in the sweat lodge or had left the
24 sweat lodge in the early rounds and never gone back
25 that went in and found her.

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1 Q When you saw her being picked up and put
2 onto the golf cart, describe to the Court what you
3 observed about her condition.

4 A What I observed about her condition is
5 that she needed three people to pick her up and her
6 body was limp. And I didn't see anything besides
7 that. She was completely limp.

8 Q After she was taken away did you see her
9 again in the next couple of hours?

10 A Yes.

11 Q Where was that?

12 A I saw her from a distance. It was in her
13 cabin, which is called the Orange House. And my
14 wife was staying in there. So I had gone in there.
15 And she was laying in a bed. And people were
16 attending to her. At that time she wasn't
17 coherent. She wasn't passed out any longer, but she
18 wasn't really coherent about her wits.

19 Q Do you know where James Ray was when you
20 saw others pick up Barbara Waters and put her on
21 golf cart?

22 A James Ray had left.

23 Q Do you know when it was that he left after
24 the end of the sweat lodge ceremony?

25 A It was shortly after I got out of the

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1 sweat lodge. I seen him for couple minutes. He got
2 in the golf cart, and one of his assistants drove
3 him away.

4 Q Were other participants in the sweat lodge
5 leaving at the same time that James Ray was?

6 A No.

7 Q What's your observation about the other
8 participants after the sweat lodge ceremony?

9 A The other participants in 2008 were
10 gathered about. Some of them were by the fire. It
11 was warming a little bit. A lot of them were
12 drinking water. The people -- Angel Valley had
13 brought watermelon down. People were eating
14 watermelon. They were recouping. They were getting
15 their wits about them again, that type of thing.

16 Q Did you observe other people in various
17 stages of distress?

18 A Yes, I did.

19 Q Tell The Court what else you saw.

20 A I saw another -- one of the other ladies.
21 I can't remember her name right now. I can just
22 picture her. She was short with dark, curly hair.
23 She wasn't coherent. She was walking with aid from
24 others. And later that evening when the closing
25 event was, she had come to it. She wasn't able to

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1 eat any dinner, that type of thing.

2 Q Were you alarmed by any of what you saw?

3 A In 2008 I assumed it was normal because I
4 was told it was normal by James Ray.

5 Q Had you done a sweat lodge previous to
6 2008 with James Ray?

7 A I've never done a sweat lodge in my life
8 with anyone.

9 Q In 2009 did you come back to Angel Valley
10 Retreat Center for another Spiritual Warrior
11 Seminar?"

12 A Yes, I did.

13 Q In what capacity?

14 A I came back as a volunteer, which was part
15 of James Ray's Dream Team.

16 Q Did you have to pay to be part of that
17 Dream Team?

18 A I had to pay my -- for me to stay there
19 and, of course, my air fair there and back.

20 Q What do you mean you had to pay for you to
21 stay there?

22 A I had to pay Angel Valley to rent the room
23 that I was in and for the food I was eating. It was
24 a package deal of so much per day. And then, of
25 course, my air fair back and forth.

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1 Q Did you pay anything to James Ray?
2 A No.
3 Q What was the role? What is a Dream Team
4 member?
5 A My role as a Dream Team member, being only
6 the second time I had done that, was to assist and
7 help out and be guided by the people that work for
8 James Ray.
9 Q Did you receive training from James Ray?
10 A Not from James Ray at all. No. Just
11 instruction from his assistant, Megan.
12 Q In 2009 as a Dream Team member did you
13 participate in all of the events of the Spiritual
14 Warrior Seminar?
15 A As a participant? No. I was there to
16 assist the people that were the participants.
17 Q Did you participate, for example, in the
18 dream quest in 2009 -- the Vision Quest in 2009?
19 A No.
20 Q Did you participate in the sweat lodge
21 ceremony in 2009?
22 A Yes, I did.
23 Q What was your role?
24 A My role I was given by James's people,
25 which was Megan, was that I was to be in the north,

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1 which turned out to really be the west in the sweat
2 lodge. And I was the keeper of the north. And I
3 was there to hold space for the participants and do
4 the best I could.
5 Q What does that mean, to hold space for the
6 participants?
7 A To hold space is to keep positive energy
8 and thoughts for the people that are in the sweat
9 lodge with me at all times.
10 Q Were you present for the briefing, the
11 presweat lodge briefing in 2009?
12 A Yes.
13 Q You described for the Court the sequence
14 of events from the Vision Quest to breakfast to
15 coming to the Crystal Hall?
16 A Right.
17 Q Then to the briefing?
18 A Yes.
19 Q How did what happened in 2008 compare to
20 what happened in 2009 in terms of the sequence of
21 those events?
22 A In the sequence of those events -- from
23 the Vision Quest are you asking?
24 Q Yes
25 A From the Vision Quest it was -- the

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1 difference was that it was colder. The elements
2 were harsher.
3 Q In two thousand and --
4 A 2009. It was warmer in 2008. It rained
5 on the participants a little bit in 2009. The
6 energy from the people was way different. The
7 people in 2009 were very what I call testosterone,
8 high testosterone, very driven, less thoughtful to
9 some of the teachings that James Ray had taught in
10 2008 and the participants of 2008 had experienced.
11 Q And then in terms of the getting breakfast
12 and coming to the Crystal Hall for the briefing, was
13 that similar?
14 A It was similar. Yes.
15 Q Did you participate or listen to the
16 briefing given by James Ray?
17 A Yes.
18 Q The presweat lodge briefing in 2009?
19 A Yes.
20 Q What things did Mr Ray say in 2009 to the
21 participants prior to going into the sweat lodge?
22 A He said that -- a lot of the same stuff he
23 said in 2008. He said that it was -- nobody's ever
24 died yet. Don't worry about it. All the same
25 things I said about 2008 he said.

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1 He didn't give any specific instructions
2 as far as how to manage yourself in the sweat lodge
3 other than the safety issues of moving clockwise
4 through the sweat lodge and that type of thing.
5 Q Did Mr. Ray talk in 2009 about the heat
6 inside the sweat lodge?
7 A In 2009 he gave the same speech about how
8 no one has ever seen a sweat lodge like James Ray
9 does at Angel Valley and all the same guidance
10 really.
11 Q Did he make the same statement about no
12 one has ever died yet?
13 A Yes, he did.
14 Q In 2009 was the sweat lodge event also a
15 surprise to the participants, as it had been in
16 2008?
17 A As surprised as -- yeah. I don't know if
18 any of them -- how many of them might have known
19 beforehand. But James Ray always tried to keep it a
20 secret of what happened at each one of his events.
21 He never wanted people from previous years to tell
22 the people in the current year what was going to
23 happen.
24 Q Was Sheryl Stern there in 2009?
25 A No, she was not.

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1 Q. Did that surprise you?

2 A. It surprised me very much because I had
3 just seen her previously in July and thought she was
4 coming, and she wasn't there.

5 Q. About what time did the sweat lodge
6 ceremony begin in 2009?

7 A. Right around it 2:30, 3:00 o'clock. Same
8 as 2008.

9 Q. And did you go in at the beginning of it
10 and take your position?

11 A. Yes, I did. I was probably the fourth
12 person in after James Ray and two of his staff
13 members. And I think one other person was in front
14 of me.

15 Q. Did you stay in the whole time?

16 A. Yes, I did.

17 Q. You told the Court you discussed how in
18 2008 you learned how to lift the flap to get air?

19 A. That's correct.

20 Q. Did you do that in 2009?

21 A. Yes, I did.

22 Q. Approximately how many times?

23 A. Well, in 2009 I set my intention to be in
24 the sweat lodge the whole time. So I was doing the
25 best I could. And after about the third round I was

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1 laying face down again, and it was starting to get
2 too hot, so I started to lift the tarp.

3 Q. And what happened?

4 A. At that point I -- somebody else from the
5 other side of the sweat lodge had lifted the side of
6 the sweat lodge, and light had come in. And they
7 had lifted quite high. I experienced that light.
8 And James Ray said that that was blasphemous and
9 that that person should not do that.

10 Q. Did that affect -- for you did that
11 affect -- did you continue to raise the flap after
12 that statement by James Ray about it being
13 blasphemous?

14 A. I did. I waited until he opened the flap
15 between rounds so that there was no way that he
16 could see the light if I had lifted it. And I was
17 also lifting it only probably about two to three
18 inches off the ground, just enough to let some
19 oxygen in.

20 Q. Can you tell the Court, Mr. Rock -- and I
21 don't want to have you go into details about Kirby
22 Brown and James Shore

23 A. Okay.

24 Q. But can you tell the Court, were you --
25 was your position -- where was your position in the

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1 lodge with respect to Kirby Brown and James Shore?

2 A. James Shore was to my left. He was two
3 people away. And Kirby Brown was right next to
4 him.

5 Q. Were you -- was there a time when you
6 lifted the flap in response to what you were
7 observing with respect to those two individuals?

8 A. No. No. I was lifting the flap between
9 rounds so that I could get oxygen so that I could
10 stay in there. Otherwise I felt I would have to
11 leave.

12 Q. And why did you not just leave?

13 A. Because I had a responsibility I felt as a
14 Dream Team member to hold my position, and I had
15 also set my intention before I went in the sweat
16 lodge to be in there the whole time and be there for
17 the people that were in there and be able to get out
18 of there to the best of my ability and help them
19 when I got out. Because I knew they would need
20 help.

21 Q. In 2008 did you ever hear James Ray make
22 statements about to encourage or discourage people
23 from leaving the sweat lodge?

24 A. In 2008 I would hear him occasionally say
25 come back in or that type of thing a few times. Not

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1 very often.

2 Q. And what about in 2009? What did you hear
3 Mr. Ray say?

4 A. In 2009 it seemed like he said it between
5 every round from the fourth round on. And he would
6 say things like you're better than that, and he
7 would call people's names and ask them to come back
8 in.

9 Q. By the end of the sweat lodge ceremony in
10 2009, do you have any idea how many people were
11 still in?

12 A. I would say probably half.

13 Q. And how did that compare to 2008?

14 A. In 2008 people came and left more
15 frequently. So towards the end there was more
16 people in there than that.

17 Q. In which year were there more people?

18 A. In 2008 at the end there was more people.

19 Q. Than in 2009?

20 A. Yes.

21 Q. And why was that?

22 A. Because they came and left. It was more
23 revolving door, let's say, of people coming in and
24 out.

25 Q. In 2009 at some point did you become aware

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1 that people were in distress inside the sweat lodge?
 2 A. Yes. In 2009 it was towards the end. I
 3 started to hear Kirby Brown gurgling. I knew it was
 4 her gurgling because I heard somebody say that Kirby
 5 needs to get out. And I also heard James Ray say
 6 the flap is shut. We'll handle this after the
 7 round.

8 MR. KELLY: Excuse me, Your Honor. Again, I
 9 note my earliest objection during this hearing.
 10 This should not be a minitrial on the 2009
 11 incident. And I see in no way this relates to the
 12 proffered 404(b) evidence during the years 2005
 13 through 2008.

14 And again, Judge, I mention that there are
 15 cameras here. I watched the news last night
 16 carefully, and I noticed in the statewide news there
 17 was no discussion about Terrazas and the standard of
 18 proof for the 404(b) hearing, but there were
 19 comments about recklessness and my client causing
 20 the deaths of these people.

21 The reason I submit that's important is
 22 it's necessary for this court to assist us in
 23 selecting a fair and impartial jury a mere three
 24 months from now. And what we're doing now is a
 25 minitrial in 2009. So I'd ask that any further

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1 testimony in regards to what happened in 2009 be
 2 precluded.

3 MS. POLK: Your Honor, may I respond?

4 THE COURT: You may.

5 MS. POLK: Your Honor, I am very carefully
 6 trying not to go into a lot of detail. This witness
 7 at trial will testify in much greater detail about
 8 the rounds and ultimately the events surrounding
 9 what he just said.

10 What this court has already noted and what
 11 the law requires is that for the prior events to be
 12 found admissible under 404(b) and to be relevant,
 13 they have to be similar to what happens in 2009.
 14 And I'll make an offer of proof because you haven't
 15 heard testimony yet pertaining to Tere Ginerella,
 16 who was there in 2005.

17 MR. KELLY: Your Honor, I don't object to
 18 Ms. Polk making after offer of proof, but I do
 19 object that she makes it in front of witness.

20 MS. POLK: Judge, my point is that there will
 21 be testimony to come that will tie in Mr. Ray's
 22 response to the distress of Kirby Brown and his
 23 reaction and what he tells participants in 2009,
 24 that there is something similar in 2005. You heard
 25 about --

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1 MR. KELLY: Your Honor, again, the witness is
 2 present.

3 THE COURT: There is a general description
 4 here. And Ms. Polk is pointing out the specific
 5 aspect of similarity. I'm going to ask at this
 6 time, Counsel, is that there be offers of proof. I
 7 think the defense is, basically, saying they're not
 8 going to say that this is not a contested issue.

9 And I believe the defense is recognizing,
 10 Ms. Polk, that you do have to establish what the
 11 allegations consist of.

12 And I think Mr. Kelly you're willing to
 13 accept an offer of proof as to what this witness
 14 would say for that purpose.

15 MR. KELLY: For that limited purpose and the
 16 purpose of this hearing, absolutely.

17 THE COURT: Okay. Then I guess Mr. Kelly is
 18 also pointing out, Ms. Polk -- well, kind of this
 19 detailed instruction about what type of testimony
 20 someone might be listening to.

21 How many other areas were you going to
 22 cover with Mr. Rock?

23 MS. POLK: Judge, this is, essentially, it. He
 24 did give the answer. I wasn't going to go into
 25 further detail. I was responding to the suggestion

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1 that what he had to say about Mr. Ray's comments in
 2 2009 were not relevant. And my response is they are
 3 relevant because they are similar to testimony that
 4 the Court has yet to hear.

5 But I don't intend to go any further other
 6 than just have him generally describe the scene.
 7 And I don't need him to go into detail. I believe
 8 he made the one comment, I believe. There was an
 9 objection. He went ahead and said it. I don't know
 10 if the Court heard it.

11 THE COURT: I don't believe I did. I believe
 12 the objection process was starting. What I'm going
 13 to suggest, then, is cover the other area and then
 14 you can complete the offer of proof as soon as
 15 Mr. Rock is excused. So to make that clear, I want
 16 to make sure I get the answer.

17 MS. POLK: When do you get the answer from
 18 Mr. Rock?

19 THE COURT: We can find out what the answer
 20 is. But if you cover the other area in terms of
 21 more detail with regard to Kirby Brown or any type
 22 of offer of proof you want in that regard, we'll
 23 just do that before we leave.

24 MS. POLK: Okay. Then can the witness give his
 25 answer again?

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1 THE COURT: To make sure, yes.
2 Q BY MS POLK Mr Rock, I asked you -- I
3 can't remember what I asked you
4 THE COURT: Well, Ms. Polk, that can be covered
5 with the offer of proof. The defense said they're
6 not going to contest that. I can consider that as
7 true for purposes of deciding the 404(b). So that's
8 something you can recite to me what the offer of
9 proof will be on the point.
10 MS. POLK: I can do it, Judge. But I'm not
11 sure what his exact words would be.
12 THE COURT: So you're telling me you're not
13 sure what the offer of proof would be?
14 MS. POLK: No. I know what my offer of proof
15 is with respect to the other incidents that are
16 similar to what happened in 2009. What I had asked
17 Mr. Rock was he established that he is close in the
18 sweat lodge to Kirby Brown, that a comment is made
19 by somebody that she's not breathing. And then
20 Mr. Ray said something. And I had asked Mr. Rock to
21 tell the Court what it is that Mr. Ray said in
22 response to being notified that Kirby Brown wasn't
23 breathing.
24 You can answer that if you can.
25 THE WITNESS: James Ray's response was is that

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1 the gate is closed and we'll deal with that after
2 this round. The gate, meaning the door, the entry
3 to the sweat lodge.
4 Q BY MS POLK Thank you You don't need
5 to go into detail, then, Mr. Rock about the scene
6 once the sweat lodge ceremony was over -- I just
7 want to ask you were there people in various stages
8 of distress when it was over?
9 A. Yes.
10 Q And was that similar to what had happened
11 in 2008?
12 A. It was beyond that.
13 Q Beyond that in what respect?
14 A. Beyond that that there was people laying
15 all over the place on the ground and not very
16 responsive.
17 MS. POLK: May I have a moment, Your Honor?
18 THE COURT: Yes.
19 MS. POLK: I have nothing further, Your Honor.
20 THE COURT: Thank you.
21 MS. POLK: Thank you. Thank you, Mr. Rock.
22 CROSS-EXAMINATION
23 BY MR. KELLY:
24 Q Mr Rock, I'm putting on the monitor
25 what's been admitted as Exhibit No 62.

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1 A. Excuse me. Whom I'm speaking with?
2 THE COURT: Mr. Kelly, you may proceed --
3 Q. BY MR. KELLY: Mr. Rock, I'm putting on
4 the monitor what's been admitted as Exhibit No. 62.
5 This is a photograph of the Spiritual Warrior event
6 in 2008 -- do you recognize the person in that
7 photograph?
8 A. That's Tari Coffey.
9 Q. You told us on direct that Miss Coffey was
10 pregnant; correct?
11 A. Yes, she was.
12 Q And you were implying that somehow this
13 event would be dangerous to her physical condition;
14 correct?
15 A. I stated that she asked James Ray if the
16 fact that she was pregnant, if she would be okay
17 doing the sweat lodge event.
18 Q. Does she look okay here in Exhibit 64?
19 A. And he said yes.
20 Q. Did you hear my question?
21 A. No, I didn't.
22 Q. Does she look okay in this exhibit?
23 A. She looks just fine.
24 Q. Now, Mr. Rock, earlier today I saw you in
25 the hallway with a stack of paper and a yellow

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1 highlighter. You were reading something; correct?
2 A. That's correct.
3 Q. What were you reading?
4 A. I was reading notes.
5 Q Notes from what?
6 A. My notes from 2008.
7 Q. Whose notes? Specifically, did you write
8 the notes you were reading?
9 A. No, I did not.
10 Q Who wrote the notes?
11 A. The person that wrote the notes was Julia.
12 Q And how did you obtain a copy of the
13 notes?
14 A. She sent me a copy of the notes.
15 Q. Why were you reviewing them before your
16 testimony?
17 A. I was looking at the notes because I
18 wanted to know what Julia had written.
19 Q. And before -- do you recall your
20 testimony -- or excuse me -- your statement provided
21 to Detective Diskin on September 21, 2010?
22 A. The what?
23 Q The statement, the interview.
24 A. What interview?
25 Q. Do you remember being interviewed by

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1 detective Diskin?
2 A. By who?
3 Q Do you have problems with memory?
4 A. I have problems with hearing you because
5 you're mumbling.
6 Q Okay Do you have problems with memory is
7 my question?
8 A. No, I don't.
9 Q Pardon me?
10 A. No, I don't.
11 Q Do you remember being interviewed by
12 Detective Diskin in September 21, 2010?
13 A. September 21, 2010. Yes.
14 Q Do you recall that?
15 A. Yes.
16 Q Do you see Detective Diskin in the
17 courtroom?
18 A. He's right there.
19 Q Was a transcript of that interview
20 contained in the notes that you had in the hallway?
21 A. No.
22 Q Where are the notes that you had in the
23 hallway?
24 A. They're still in the hallway.
25 MR. KELLY: Your Honor, I'd ask for a break so

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1 that we can retrieve those notes.
2 THE COURT: Ms. Polk?
3 MS. POLK: Your Honor, I have no objection.
4 Although, I don't know the purpose. I don't know
5 why we're discussing notes being confrontational.
6 MR. KELLY: Judge, I'd like to ask one more
7 question, please. And then I'll explain the
8 relevance.
9 Q Prior to making the statement to
10 Detective Diskin on September 21, 2010, you had
11 reviewed the transcript of Sheryl Stern, correct?
12 A. I had seen a transcript of Sheryl
13 Stern's. Yes.
14 MR. KELLY: Judge, now I would like to be able
15 to review the notes that this witness reviewed prior
16 to his testimony to assist in cross-examination.
17 Obviously the issue in this particular Terrazas
18 hearing is whether or not the state can meet it's
19 burden by clear and convincing evidence. And if the
20 testimony of the witness is primarily based on
21 witness statements of others, that's an important
22 consideration for this court to know.
23 THE COURT: Ms. Polk indicated she wasn't
24 objecting in any event. And it was something that
25 was reviewed right before the testimony and

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1 apparently covered the same time frame and the
2 events, I guess.
3 Ms. Polk?
4 MS. POLK: Well, Judge, first of all it's not
5 clear to me -- Mr. Kelly hasn't really established
6 with this witness what he was looking at. He agreed
7 that he was looking at -- I think I heard the
8 witness agreed at some point he reviewed the report
9 by Sheryl Stern. He stated that he did -- in the
10 hallway he was looking at notes by Julia.
11 But beyond that I don't know what else he
12 was looking at. I don't know if he had with him
13 private papers. I don't know what the authority is
14 for Mr. Kelly to demand that all the papers that the
15 witness was looking at out in the hallway suddenly
16 be produced for Mr. Kelly to review.
17 I think first he needs to establish what
18 else was there and then what the reason why he would
19 want to see. And furthermore, Judge, all these
20 documents have been disclosed. I'm not sure why
21 we're talking about retrieving reports from the
22 hallway.
23 MR. KELLY: Judge, if all these documents have
24 been disclosed, I have no objection. My request is
25 that it's my understanding from this witness's

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1 testimony that there may be additional documents
2 that have not been disclosed. And the basis of my
3 authority is Rule 15. And we wouldn't know until we
4 looked at his notes.
5 THE COURT: That could be an issue of --
6 disclosure issue with the other thing I was just
7 thinking about. For purposes of this hearing,
8 Mr. Kelly, I might have missed the question, but
9 whether or not this is the type of material that
10 would refresh your recollection. In any event --
11 which would entitle you to look at it right now in
12 any event. It doesn't have to be someone's own
13 notes to be an item that refreshes recollection.
14 Normally that is something the other party could
15 look at.
16 MR. KELLY: Judge, I agree. And I have been
17 provided as an example notes prepared by presumably
18 Julia, Bates stamped 2394 through 2398 from the
19 State of Arizona. There is nothing in this note and
20 there are many statements attributed to my client in
21 these notes which were taken -- and they're entitled
22 "Spiritual Warrior 2008 Notes".
23 There is nothing in this note that's
24 consistent with the testimony of this witness. I
25 don't know whether he has some additional notes or

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1 not. And if this is the scope -- and, Judge, I'll
2 avow to the Court when I walked by Mr. Rock, he had
3 a rather thick stack of paper. It was much thicker
4 than the three or four pages I have in my hand.

5 THE COURT: Ms. Polk, are you familiar with the
6 document Mr. Kelly is holding right now?

7 MS. POLK: Yes, Judge. The state -- these are
8 the notes that were taken by Julia Bunker. They
9 have been referred to by the previous witness. She
10 said that she had reviewed them and that they were,
11 in fact, accurate. I believe these are the notes
12 that this witness is referring to.

13 These notes were disclosed to the state.
14 The state has made full disclosure of everything we
15 have in our position. I would also note that on
16 line a lot of information is available, and that
17 appears to be how Vicky Rock got these notes.

18 I disagreed with the statement by Mr. Ray
19 that this witness's testimony is not consistent with
20 these notes. I would disagree with that.

21 Judge, I just don't understand the rule
22 that Mr. Kelly is citing that all of a sudden in
23 cross-examination he gets to start demanding papers
24 from a witness. If he wants to go through and
25 establish that this witness has looked at things

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1 related to the case, he needs to ask this witness
2 what have you reviewed.

3 But to demand all his private papers and
4 start going through them on some fishing expedition,
5 his belief that the state has not made full
6 disclosure, we are far afield from proper
7 cross-examination.

8 MR. KELLY: Judge, on the record I have to
9 expound -- this is far from a fishing expedition.
10 When the man comes in here and he says he reviewed
11 some notes, we don't know the contents of the
12 notes. And due process requires me to be prepared
13 for cross-examination. That is not a fishing
14 expedition.

15 THE COURT: What I want to know from Mr. Rock,
16 Mr. Kelly, is whether he reviewed these documents in
17 preparation for his testimony in this hearing.

18 MR. KELLY: Judge, I apologize for my emotion.
19 And I believe I asked and I thought he answered that
20 he had.

21 THE COURT: And I indicated I may have missed
22 it. But I want to clear that up. I'll just ask
23 Mr. Rock.

24 Did you review this information that
25 Mr. Kelly has been referring to -- did you review

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1 that information in preparation for your testimony
2 in this hearing?

3 THE WITNESS: Yes, I did.

4 THE COURT: Then I believe Mr. Kelly gets to
5 look at whatever information Mr. Rock referred to.
6 Ms. Polk?

7 MS. POLK: Again, Judge, I think -- I don't
8 know what else the witness had with him. Mr. Kelly
9 is demanding all the notes be brought in. I agreed
10 whatever this witness reviewed in preparation for
11 testimony is proper subject for cross-examination.

12 But I don't even think we've gotten that
13 far to establish everything that -- he jumped from
14 establishing that the witness had looked at Sheryl
15 Stern's statement and Julia Bunker to demanding all
16 the notes that are out in the hallway.

17 THE COURT: Mr. Kelly, could you continue with
18 Mr. Rock these basic questions. Go ahead.

19 MR. KELLY: Okay. I will.

20 Q Mr. Rock, you, of course, have had the
21 opportunity to sit here and listen to this
22 discussion; correct?

23 A. Yes.

24 Q And the discussion centers around the
25 contents of the notes in the hallway, correct?

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1 A. Yes, it does.

2 Q. Where did you get those documents?

3 A. I was emailed them by Julia Bunker.

4 They're the notes from the 2008 Spiritual Warrior
5 that she created because she created notes at that
6 event.

7 Q. And when I walked past you before lunch --

8 A. Yes.

9 Q. And I'm approximating, sir. But you had a
10 stack of papers of considerable thickness, much,
11 much more than the three or four pages that Ms. Polk
12 has in her hands; correct?

13 A. I had -- it's actually 40 pages.

14 Q Okay. 40 pages.

15 MR. KELLY: May I approach the witness?

16 THE COURT: Yes, you may.

17 MR. KELLY: Mr. Rock --

18 And this is not marked as an exhibit,
19 Judge.

20 THE COURT: It can be.

21 Q. BY MR. KELLY. The papers that we're
22 looking at, do you see down here on the bottom a
23 stamp?

24 A. Uh-huh.

25 Q. It's something that's referred to as a

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1 "Bates stamp " Do you see how each page is
2 sequentially numbered?
3 A. Yup. I see them.
4 Q Now, do the 40 pages out in the hallway
5 have these Bates stamped on them?
6 A. No.
7 Q Now, Judge, I'd renew my request.
8 THE COURT: I believe that should be marked,
9 Mr. Kelly. If there is an extra copy.
10 Ms. Polk, it's been referred to.
11 MR. KELLY: Judge, for the record, and I
12 believe Ms. Polk will agree to this avowal, that the
13 disclosure from the State of Arizona from page No. 1
14 through everything they've given us is Bates stamped
15 sequentially.
16 THE COURT: Ms. Polk?
17 MS. POLK: It is, Judge. But we discussed the
18 entire set of Julia Bunker notes. It's not the
19 three pages that Mr. Kelly is waving around. In
20 fact, it is 40 pages. It goes through Bates stamp
21 No. 2421. I don't remember what number it began
22 with.
23 THE COURT: 127.
24 Mr. Kelly, Ms. Polk has avowed that this
25 40-page document from Julia, her notes have been

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1 provided.
2 MR. KELLY: Judge, with all due respect, if the
3 notes in the hallway are not Bates stamped, how
4 would she know? How would anyone know?
5 THE COURT: We're going to need to straighten
6 this matter out. I certainly hope we could have
7 testimony through the time, through the day. But
8 we're going to need to look at the records it
9 appears.
10 Ms. Polk, you have a disclosure
11 obligation. Obviously you're aware of that. But
12 if -- there may be documents out there that -- well.
13 MR. KELLY: What I would suggest, Judge, is
14 Miss Durrer is here. She probably knows this file
15 as well as anyone. And I have no objection to
16 Miss Durrer making a comparison between the Bates
17 stamped Julia's notes and the documents in the
18 hallway and advising Mr. Li, Ms. Do and myself of
19 the result.
20 THE COURT: Ms. Polk?
21 MS. POLK: I'll accept that offer. May I voir
22 dire the witness briefly?
23 THE COURT: You may do that.
24 ///
25 ///

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VOIR DIRE EXAMINATION

2 BY MS. POLK:
3 Q Mr. Rock, other than the approximately
4 40 -- I don't do math on the fly, but looks like
5 maybe 48 pages that were Julia Bunker's notes, is
6 there anything else that's in the hallway that you
7 were looking at?
8 A. Just a bass fishing magazine.
9 Q. Did you make personal notes on --
10 A. Yes, I did.
11 Q. -- Julia Bunker notes?
12 A. I made my own personal notes.
13 MS. POLK: Thank you.
14 THE COURT: We're going to have to recess for
15 the day.
16 MR. KELLY: Judge, given the fact there is
17 personal notes, my request now would be that simply
18 copy them and provide a copy to us for our review.
19 And we're not interested in the bass magazine.
20 THE COURT: Okay. Then we will recess for the
21 day.
22 Mr. Rock, I've told all the witnesses this
23 so far. I thought we might have the hearing
24 completed today. Apparently it will continue. So I
25 have to make sure you understand this rule of

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1 exclusion of witnesses that has been invoked for
2 purposes of this hearing.
3 And as I've had to tell other witnesses
4 with husband and wife situations, there is a problem
5 and obviously there is a temptation to talk about
6 what's going on. But you just have to avoid that
7 until this hearing is completed. It's scheduled to
8 resume on the 16th. And it should be completed at
9 that time.
10 But until it is completed, you can't talk
11 about your testimony or the case with any other
12 witness in this hearing at all. You can talk to the
13 lawyers, though. You can do that. You can speak
14 with the lawyers but you can't talk to other
15 witnesses about the case and your testimony until
16 it's done, probably next week some time.
17 Do you understand that?
18 THE WITNESS: Yes, I do.
19 THE COURT: Okay. Then, sir, I will go ahead
20 and excuse you at this time. You may want to wait
21 just a minute. I'm going to talk to the attorneys
22 just a bit, just about the records. So if you could
23 wait out in the hallway there for a moment, I'd
24 appreciate it. Thank you.
25 (End of partial transcript)

1 STATE OF ARIZONA)

2) ss REPORTER'S CERTIFICATE

3 COUNTY OF YAVAPAI)

4 I, Mina G Hunt, do hereby certify that I

5 am a Certified Reporter within the State of Arizona

6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings

8 were taken in shorthand by me at the time and place

9 herein set forth, and were thereafter reduced to

10 typewritten form, and that the foregoing constitutes

11 a true and correct transcript

12 I further certify that I am not related

13 to, employed by, nor of counsel for any of the

14 parties or attorneys herein, nor otherwise

15 interested in the result of the within action

16 In witness whereof, I have affixed my

17 signature this 23rd day of November, 2010

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20 MINA G HUNT, AZ CR No 50619

21 CA CSR No 8335

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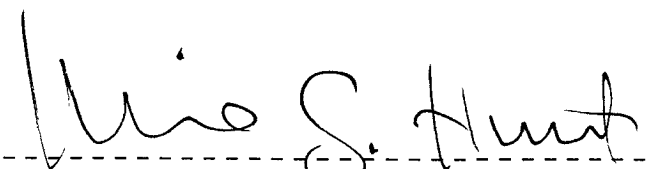
STATE OF ARIZONA)
) ss: REPORTER'S CERTIFICATE
COUNTY OF YAVAPAI)

I, Mina G. Hunt, do hereby certify that I
am a Certified Reporter within the State of Arizona
and Certified Shorthand Reporter in California.

I further certify that these proceedings
were taken in shorthand by me at the time and place
herein set forth, and were thereafter reduced to
typewritten form, and that the foregoing
constitutes a true and correct transcript.

I further certify that I am not related
to, employed by, nor of counsel for any of the
parties or attorneys herein, nor otherwise
interested in the result of the within action.

In witness whereof, I have affixed my
signature this 23rd day of November 2010.



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CA CSR No. 8335